REPUBLIC OF KENYA

ENERGY & PETROLEUM REGULATORY AUTHORITY

TENDER NAME:

CONSULTANCY SERVICES FOR STUDY OF THE KENYA ELECTRIC POWER SYSTEM

TENDER NO:

EPRA/890/RFP/0005/2026-27

Procurement Method:

Request for Proposal

PE Complete Address

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SECTION 2A: INSTRUCTIONS TO CONSULTANTS

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Detail

SECTION 2.INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

SECTION 2(A). INSTRUCTIONS TO CONSULTANTS (ITC)

[NOTES TO THE PROCURING ENTITY: THIS PART OF SECTION 2, INSTRUCTIONS TO CONSULTANTS, SHALL NOT BE MODIFIED. ANY NECESSARY CHANGES, TO ADDRESS SPECIFIC ISSUES, TO SUPPLEMENT, BUT NOT OVER-WRITE, THE PROVISIONS OF THE INSTRUCTIONS TO CONSULTANTS (ITC), SHALL BE INTRODUCED THROUGH THE DATA SHEET ONLY. THIS "NOTES TO THE PROCURING ENTITY" SHOULD BE DELETED FROM THE FINAL RFP ISSUED TO THE CONSULTANTS].

A.GENERAL PROVISIONS

1.MEANINGS/DEFINITIONS

A) "AFFILIATE(S)" MEANS AN INDIVIDUAL OR AN ENTITY THAT DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE CONSULTANT.

B) "APPLICABLE LAW" MEANS THE LAWS AND ANY OTHER INSTRUMENTS HAVING THE FORCE OF LAW IN KENYA.

C) "PROCURING ENTITY" MEANS THE ENTITY THAT IS CARRYING OUT THE CONSULTANT SELECTION PROCESS AND SIGNS THE CONTRACT FOR THE SERVICES WITH THE SELECTED CONSULTANT.

D) “CONSULTANT” MEANS A LEGALLY-ESTABLISHED PROFESSIONAL CONSULTING FIRM OR AN ENTITY THAT MAY PROVIDE OR PROVIDES THE SERVICES TO THE PROCURING ENTITY UNDER THE CONTRACT.
E) “CONTRACT” MEANS A LEGALLY BINDING WRITTEN AGREEMENT SIGNED BETWEEN THE PROCURING ENTITY AND THE CONSULTANT AND INCLUDES ALL THE ATTACHED DOCUMENTS LISTED IN ITS CLAUSE 1 (THE GENERAL CONDITIONS OF CONTRACT (GCC), THE SPECIAL CONDITIONS OF CONTRACT (SCC), AND THE APPENDICES).

F) “DATA SHEET” MEANS AN INTEGRAL PART OF THE INSTRUCTIONS TO CONSULTANTS (ITC) SECTION 2 THAT IS USED TO REFLECT SPECIFIC ASSIGNMENT CONDITIONS TO SUPPLEMENT, BUT NOT TO OVER-WRITE, THE PROVISIONS OF THE ITC.

G) “DAY” MEANS A CALENDAR DAY UNLESS OTHERWISE SPECIFIED AS "BUSINESS DAY". A BUSINESS DAY IS ANY DAY THAT IS AN OFFICIAL WORKING DAY IN KENYA AND EXCLUDES OFFICIAL PUBLIC HOLIDAYS.

H) “EXPERTS” MEANS, COLLECTIVELY, KEY EXPERTS, NON-KEY EXPERTS, OR ANY OTHER PERSONNEL OF THE CONSULTANT, SUB-CONSULTANT OR JOINT VENTURE MEMBER(S).

I) “GOVERNMENT” MEANS THE GOVERNMENT OF THE REPUBLIC OF KENYA.

J) “IN WRITING “MEANS COMMUNICATED IN WRITTEN FORM SUCH AS BY MAIL, E-MAIL, FAX, INCLUDING, DISTRIBUTED OR RECEIVED THROUGH THE ELECTRONIC-PROCUREMENT SYSTEM USED BY THE PROCURING ENTITY WITH PROOF OF RECEIPT.

K) “JOINT VENTURE (JV)” MEANS AN ASSOCIATION WITH OR WITHOUT A LEGAL PERSONALITY DISTINCT FROM THAT OF ITS MEMBERS, OF MORE THAN ONE CONSULTANT WHERE ONE MEMBER HAS THE AUTHORITY TO CONDUCT ALL BUSINESS FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV, AND WHERE THE MEMBERS OF THE JV ARE JOINTLY AND SEVERALLY LIABLE TO THE PROCURING ENTITY FOR THE PERFORMANCE OF THE CONTRACT.

L) “KEY EXPERT(S)” MEANS AN INDIVIDUAL PROFESSIONAL WHOSE SKILLS, QUALIFICATIONS, KNOWLEDGE AND EXPERIENCE ARE CRITICAL TO THE PERFORMANCE OF THE SERVICES UNDER THE CONTRACT AND WHOSE CV IS CONSIDERED IN THE TECHNICAL EVALUATION OF THE CONSULTANT'S PROPOSAL.

M) “ITC” (THIS SECTION2 OF THE RFP) MEANS THE INSTRUCTIONS TO CONSULTANTS THAT PROVIDES THE CONSULTANTS WITH ALL INFORMATION NEEDED TO PREPARE THEIR PROPOSALS.

N) “LETTER OF RFP” MEANS THE LETTER OF INVITATION BEING SENT BY THE PROCURING ENTITY TO THE CONSULTANTS.

O) “NON-KEY EXPERT(S)” MEANS AN INDIVIDUAL PROFESSIONAL PROVIDED BY THE CONSULTANT OR ITS SUB-CONSULTANT AND WHO IS ASSIGNED TO PERFORM THE SERVICES OR ANY PART THEREOF UNDER THE CONTRACT AND WHOSE CVS ARE NOT EVALUATED INDIVIDUALLY.

P) “PROPOSAL” MEANS THE TECHNICAL PROPOSAL AND THE FINANCIAL PROPOSAL OF THE CONSULTANT.

Q) “PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)” MEANS THE STATUTORY AUTHORITY OF THE GOVERNMENT OF KENYA THAT MANDATED WITH THE ROLE OF REGULATING AND MONITORING COMPLIANCE WITH THE PUBLIC PROCUREMENT LAW AND REGULATIONS.

R) “RFP” MEANS THE REQUEST FOR PROPOSALS TO BE PREPARED BY THE PROCURING ENTITY FOR THE SELECTION OF CONSULTANTS.

S) “SERVICES” MEANS THE WORK TO BE PERFORMED BY THE CONSULTANT PURSUANT TO THE CONTRACT.

T) “SUB-CONSULTANT” MEANS AN ENTITY TO WHOM THE CONSULTANT INTENDS TO SUBCONTRACT ANY PART OF THE SERVICES WHILE THE CONSULTANT REMAINS RESPONSIBLE TO THE PROCURING ENTITY DURING THE WHOLE PERFORMANCE OF THE CONTRACT.

V) “TERMS OF REFERENCE (TORS)” MEANS THE TERMS OF REFERENCE THAT EXPLAINS THE OBJECTIVES, SCOPE OF WORK, ACTIVITIES, AND TASKS TO BE PERFORMED, RESPECTIVE RESPONSIBILITIES OF THE PROCURING ENTITY AND THE CONSULTANT, AND EXPECTED RESULTS AND DELIVERABLES OF THE ASSIGNMENT.

2. INTRODUCTION

2.1 THE PROCURING ENTITY NAMED IN THE **DATA SHEET** INTENDS TO SELECT A CONSULTANT FROM THOSE LISTED IN THE REQUEST FOR PROPOSALS (RFP), IN ACCORDANCE WITH THE METHOD OF SELECTION SPECIFIED IN THE **DATA SHEET**.

2.2 THE CONSULTANTS ARE INVITED TO SUBMIT A TECHNICAL PROPOSAL AND A FINANCIAL PROPOSAL AS SPECIFIED IN THE DATA SHEET, FOR CONSULTING SERVICES REQUIRED FOR THE ASSIGNMENT NAMED IN THE DATA SHEET. THE PROPOSAL WILL BE THE BASIS FOR NEGOTIATING AND ULTIMATELY SIGNING THE CONTRACT WITH THE SELECTED CONSULTANT.

2.3 THE CONSULTANTS SHOULD FAMILIARIZE THEMSELVES WITH THE LOCAL CONDITIONS AND TAKE THEM INTO ACCOUNT IN PREPARING THEIR PROPOSALS, INCLUDING ATTENDING A PRE-PROPOSAL CONFERENCE IF ONE IS SPECIFIED IN THE DATA SHEET. ATTENDING ANY SUCH PRE-PROPOSAL CONFERENCE IS OPTIONAL AND IS AT THE CONSULTANTS' EXPENSES.

2.4 THE PROCURING ENTITY WILL TIMELY PROVIDE, AT NO COST TO THE CONSULTANTS, THE INPUTS, RELEVANT PROJECT DATA, AND REPORTS REQUIRED FOR THE PREPARATION OF THE CONSULTANT'S PROPOSAL AS SPECIFIED IN THE DATA SHEET.

3.CONFLICT OF INTEREST

3.1 THE CONSULTANT IS REQUIRED TO PROVIDE PROFESSIONAL, OBJECTIVE, AND IMPARTIAL ADVICE, ALWAYS HOLDING THE PROCURING ENTITY'S INTEREST'S PARAMOUNT, STRICTLY AVOIDING CONFLICTS WITH OTHER ASSIGNMENTS OR ITS OWN CORPORATE INTERESTS AND ACTING WITHOUT ANY CONSIDERATION FOR FUTURE WORK.

3.2 THE CONSULTANT HAS AN OBLIGATION TO DISCLOSE TO THE PROCURING ENTITY ANY SITUATION OF ACTUAL OR POTENTIAL CONFLICT THAT IMPACTS ITS CAPACITY TO SERVE THE BEST INTEREST OF THE PROCURING ENTITY. FAILURE TO DISCLOSE SUCH SITUATIONS MAY LEAD TO THE DISQUALIFICATION OF THE CONSULTANT OR THE TERMINATION OF ITS CONTRACT.

3.3 WITHOUT LIMITATION ON THE GENERALITY OF THE FOREGOING, AND UNLESS STATED OTHERWISE IN THE DATA SHEET THE CONSULTANTS SHALL NOT BE HIRED UNDER THE CIRCUMSTANCES SET FORTH BELOW:

I) CONFLICTING ACTIVITIES

CONFLICT BETWEEN CONSULTING ACTIVITIES AND PROCUREMENT OF GOODS, WORKS OR NON-CONSULTING SERVICES: A FIRM THAT HAS BEEN ENGAGED BY THE PROCURING ENTITY TO PROVIDE GOODS, WORKS, OR NON-CONSULTING SERVICES FOR A PROJECT, OR ANY OF ITS AFFILIATES, SHALL BE DISQUALIFIED FROM PROVIDING CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO THOSE GOODS, WORKS, OR NON-CONSULTING SERVICES. CONVERSELY, A FIRM HIRED TO PROVIDE CONSULTING SERVICES FOR THE PREPARATION OR IMPLEMENTATION OF A PROJECT, OR ANY OF ITS AFFILIATES, SHALL BE DISQUALIFIED FROM SUBSEQUENTLY PROVIDING GOODS OR WORKS OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO THE CONSULTING SERVICES FOR SUCH PREPARATION OR IMPLEMENTATION.

II) CONFLICTING ASSIGNMENTS

CONFLICT AMONG CONSULTING ASSIGNMENTS: A CONSULTANT (INCLUDING ITS EXPERTS AND SUB-CONSULTANTS) OR ANY OF ITS AFFILIATES SHALL NOT BE HIRED FOR ANY ASSIGNMENT THAT, BY ITS NATURE, MAY CONFLICT WITH ANOTHER ASSIGNMENT OF THE CONSULTANT FOR THE SAME OR FOR ANOTHER PROCURING ENTITY.

(III) CONFLICTING RELATIONSHIPS

RELATIONSHIP WITH THE PROCURING ENTITY'S STAFF: A CONSULTANT (INCLUDING ITS EXPERTS AND SUB-CONSULTANTS) THAT HAS A CLOSE BUSINESS OR PERSONAL RELATIONSHIP WITH SENIOR MANAGEMENT OR PROFESSIONAL STAFF OF THE PROCURING ENTITY WHO HAS THE ABILITY TO INFLUENCE THE BIDDING PROCESS AND: (I) ARE DIRECTLY OR INDIRECTLY INVOLVED IN THE PREPARATION OF THE TERMS OF REFERENCE FOR THE ASSIGNMENT,(II) THE SELECTION PROCESS FOR THE CONTRACT, OR (III) THE SUPERVISION OF THE CONTRACT, MAY NOT BE AWARDED A CONTRACT, UNLESS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP HAS BEEN RESOLVED IN A MANNER THAT DETERMINES THERE IS NO CONFLICT TO AFFECT THIS SELECTION PROCESS.

IV) OTHERS

ANY OTHER TYPES OF CONFLICTING RELATIONSHIPS AS INDICATED IN THE **DATA SHEET**.

4.UNFAIR COMPETITIVE ADVANTAGE

4.1 FAIRNESS AND TRANSPARENCY IN THE SELECTION PROCESS REQUIRE THAT THE CONSULTANTS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THE ASSIGNMENT IN QUESTION. TO THAT END, THE PROCURING ENTITY SHALL INDICATE IN THE **DATA SHEET** AND MAKE AVAILABLE TO ALL CONSULTANTS TOGETHER WITH THIS RFP ALL INFORMATION THAT WOULD IN THAT RESPECT GIVE SUCH CONSULTANT ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING CONSULTANTS.

5.CORRUPT AND FRAUDULENT PRACTICES

5.1 CONSULTANT FIRMS OR ANY OF ITS MEMBERS SHALL NOT BE INVOLVED IN CORRUPT, COERCIVE, OBSTRUCTIVE, COLLUSIVE OR FRAUDULENT PRACTICE. CONSULTANT FIRMS OR ANY OF ITS MEMBERS THAT ARE PROVEN TO HAVE BEEN INVOLVED IN ANY OF THESE PRACTICES SHALL BE AUTOMATICALLY DISQUALIFIED AND WOULD NOT BE AWARDED A CONTRACT.

5.2 **ANTI- COMPETITIVE AND COLLUSIVE PRACTICES**

5.2.1 THE PROCURING ENTITY REQUIRES COMPLIANCE WITH THE PROVISIONS OF THE COMPETITION ACT 2010, REGARDING COLLUSIVE PRACTICES IN CONTRACTING. ANY CONSULTANT FOUND TO HAVE ENGAGED IN COLLUSIVE CONDUCT SHALL BE DISQUALIFIED AND CRIMINAL AND/OR CIVIL SANCTIONS MAY BE IMPOSED.

5.2.2 IN FURTHER PURSUANCE OF THIS POLICY, CONSULTANTS SHALL PERMIT AND SHALL CAUSE THEIR AGENTS (WHERE DECLARED OR NOT), SUBCONTRACTORS, SUB-CONSULTANTS, SERVICE PROVIDERS, SUPPLIERS, AND THEIR PERSONNEL, TO PERMIT THE GOVERNMENT AND ITS AGENCIES TO INSPECT ALL ACCOUNTS, RECORDS AND OTHER DOCUMENTS RELATING TO ANY SHORT-LISTING PROCESS, PROPOSAL SUBMISSION, AND CONTRACT PERFORMANCE (IN THE CASE OF AWARD), AND TO HAVE THEM AUDITED BY AUDITORS, INVESTIGATORS OR COMPLIANCE OFFICERS.

6.ELIGIBILITY

6.1 IN SELECTION OF CONSULTANTS, SHORT-LISTING SHALL BE COMPOSED OF FIRMS OR INDIVIDUALS WHO BELONG TO THE SAME LINE OF PROFESSIONAL BUSINESS AND WHO ARE ALMOST OF THE SAME CAPABILITY.

6.2 UNLESS OTHERWISE SPECIFIED IN THE DATA SHEET, THE PROCURING ENTITY PERMITS CONSULTANTS INCLUDING PROPOSED EXPERTS, JOINT VENTURES AND INDIVIDUAL MEMBERS FROM ALL COUNTRIES AND CATEGORIES TO OFFER CONSULTING SERVICES. THE MAXIMUM NUMBER OF MEMBERS OF JV TO BE ALLOWED SHALL BE SPECIFIED IN THE **DATA SHEET**.

6.3 THE COMPETITION ACT OF KENYA REQUIRES THAT FIRMS WISHING TO TENDER AS JOINT VENTURE UNDERTAKINGS WHICH MAY PREVENT, DISTORT OR LESSEN COMPETITION IN PROVISION OF SERVICES ARE PROHIBITED UNLESS THEY ARE EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 25 OF THE COMPETITION ACT, 2010. JVS WILL BE REQUIRED TO SEEK FOR EXEMPTION FROM THE COMPETITION AUTHORITY. EXEMPTION SHALL NOT BE A CONDITION FOR SUBMISSION OF PROPOSALS, BUT IT SHALL BE A CONDITION OF CONTRACT AWARD AND SIGNATURE. A JV TENDERER SHALL BE GIVEN OPPORTUNITY TO SEEK SUCH EXEMPTION AS A CONDITION OF AWARD AND SIGNATURE OF CONTRACT. APPLICATION FOR EXEMPTION FROM THE COMPETITION AUTHORITY OF KENYA MAY BE ACCESSED FROM THE WEBSITE WWW.CAK.GO.KE.

6.4 PUBLIC OFFICERS OF THE PROCURING ENTITY, THEIR SPOUSES, CHILD, PARENT, BROTHERS OR SISTER. CHILD, PARENT, BROTHER OR SISTER OF A SPOUSE, THEIR BUSINESS ASSOCIATES OR AGENTS AND FIRMS/ORGANIZATIONS IN WHICH THEY HAVE A SUBSTANTIAL OR CONTROLLING INTEREST SHALL NOT BE ELIGIBLE TO TENDER OR BE AWARDED A CONTRACT. PUBLIC OFFICERS ARE ALSO NOT ALLOWED TO PARTICIPATE IN ANY PROCUREMENT PROCEEDINGS.

6.5 IT IS THE CONSULTANT'S RESPONSIBILITY TO ENSURE THAT IT'S EXPERTS, JOINT VENTURE MEMBERS, SUB-CONSULTANTS, AGENTS (DECLARED OR NOT), SUB-CONTRACTORS, SERVICE PROVIDERS, SUPPLIERS AND/OR THEIR EMPLOYEES MEET THE ELIGIBILITY REQUIREMENTS.

6.6 AS AN EXCEPTION TO THE FOREGOING ITC 6.1 AND 6.2 ABOVE:
A) SANCTIONS-A FIRM OR AN INDIVIDUAL THAT HAS BEEN DEBARRED BY PPRA FROM PARTICIPATING IN PUBLIC PROCUREMENT SHALL BE INELIGIBLE TO BE AWARDED A CONTRACT, OR TO BENEFIT FROM THE CONTRACT, FINANCIALLY OR OTHERWISE, DURING THE DEBARMENT PERIOD. THE LIST OF DEBARRED FIRMS AND INDIVIDUALS IS AVAILABLE FROM THE WEBSITE OF PPRA WWW.PPRA.GO.KE

B) PROHIBITIONS-FIRMS AND INDIVIDUALS OF A COUNTRY OR GOODS IN A COUNTRY MAYBE INELIGIBLE IF:

I) AS A MATTER OF LAW OR OFFICIAL REGULATIONS, KENYA PROHIBITS COMMERCIAL RELATIONS WITH THAT COUNTRY; OR

II) BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS, KENYA PROHIBITS ANY IMPORT OF GOODS OR SERVICES FROM THAT COUNTRY OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTRY.

C) RESTRICTIONS FOR GOVERNMENT-OWNED ENTERPRISES - GOVERNMENT-OWNED ENTERPRISES OR INSTITUTIONS IN KENYA SHALL BE ELIGIBLE ONLY IF THEY CAN ESTABLISH THAT THEY

I) ARE LEGALLY AND FINANCIALLY AUTONOMOUS,

II) OPERATE UNDER COMMERCIAL LAW, AND

III) THAT THEY ARE NOT DEPENDENT AGENCIES OF THE PROCURING ENTITY.

D) ESTRICTIONS FOR PUBLIC EMPLOYEES - GOVERNMENT OFFICIALS AND CIVIL SERVANTS AND EMPLOYEES OF PUBLIC INSTITUTIONS SHALL NOT BE HIRED FOR CONSULTING CONTRACTS.

6.7 MARGIN OF PREFERENCE AND RESERVATIONS - NO MARGIN OF PREFERENCE SHALL BE ALLOWED IN THE SELECTION OF CONSULTANTS. RESERVATIONS MAY HOWEVER BE ALLOWED TO A SPECIFIC GROUP OF BUSINESSES (THESE GROUPS ARE SMALL AND MEDIUM ENTERPRISES, WOMEN ENTERPRISES, YOUTH ENTERPRISES AND ENTERPRISES OF PERSONS LIVING WITH DISABILITY, AS THE CASE MAY BE), AND WHO ARE APPROPRIATELY REGISTERED AS SUCH BY THE AUTHORITY TO BE SPECIFIED IN THE DATA SHEETS. A PROCURING ENTITY SHALL ENSURE THAT THE INVITATION TO SUBMIT PROPOSALS SPECIFICALLY INCLUDES ONLY BUSINESSES OR FIRMS BELONGING TO ONE GROUP.

B.PREPARATION OF PROPOSALS

7.GENERAL CONSIDERATIONS

7.1 IN PREPARING THE PROPOSAL, THE CONSULTANT IS EXPECTED TO EXAMINE THE RFP IN DETAIL. MATERIAL DEFICIENCIES IN PROVIDING THE INFORMATION REQUESTED IN THE RFP MAY RESULT IN REJECTION OF THE PROPOSAL.

8.COST OF PREPARATION OF PROPOSAL

8.1 THE CONSULTANT SHALL BEAR ALL COSTS ASSOCIATED WITH THE PREPARATION AND SUBMISSION OF ITS PROPOSAL, AND THE PROCURING ENTITY SHALL NOT BE RESPONSIBLE OR LIABLE FOR THOSE COSTS, REGARDLESS OF THE CONDUCT OR OUTCOME OF THE SELECTION PROCESS. THE PROCURING ENTITY IS NOT BOUND TO ACCEPT ANY PROPOSAL AND RESERVES THE RIGHT TO ANNUL THE SELECTION PROCESS AT ANY TIME PRIOR TO CONTRACT AWARD, WITHOUT THERE BY INCURRING ANY LIABILITY TO THE CONSULTANT

9. LANGUAGE

9.1 THE PROPOSAL, AS WELL AS ALL CORRESPONDENCE AND DOCUMENTS RELATING TO THE PROPOSAL EXCHANGED BETWEEN THE CONSULTANT AND THE PROCURING ENTITY SHALL BE WRITTEN IN THE ENGLISH LANGUAGE.

10.DOCUMENTS COMPRISING THE PROPOSAL

10.1 THE PROPOSAL SHALL COMPRISE THE DOCUMENTS AND FORMS LISTED IN THE **DATA SHEET**.

10.2 THE CONSULTANT SHALL DECLARE IN THE FINANCIAL PROPOSAL SUBMISSION FORM, THAT IN COMPETING FOR AND EXECUTING A CONTRACT, IT SHALL UNDERTAKE TO OBSERVE THE LAWS OF KENYA AGAINST FRAUD AND CORRUPTION INCLUDING BRIBERY, AS WELL AS AGAINST ANTI-COMPETITIVE PRACTICES INCLUDING BID RIGGING.

THE CONSULTANT SHALL FURNISH INFORMATION ON COMMISSIONS, GRATUITIES AND FEES, IF ANY, PAID OR TO BE PAID TO AGENTS OR ANY OTHER PARTY RELATING TO THIS PROPOSAL AND, IF AWARDED, CONTRACT EXECUTION, AS REQUESTED IN THE FINANCIAL PROPOSAL SUBMISSION FORM.

11. ONLY ONE PROPOSAL

11.1 THE CONSULTANT (INCLUDING THE INDIVIDUAL MEMBERS OF ANY JOINT VENTURE) SHALL SUBMIT ONLY ONE PROPOSAL, EITHER IN ITS OWN NAME OR AS PART OF A JOINT VENTURE IN ANOTHER PROPOSAL. IF A CONSULTANT, INCLUDING ANY JOINT VENTURE MEMBER, SUBMITS OR PARTICIPATES IN MORE THAN ONE PROPOSAL, ALL SUCH PROPOSALS SHALL BE DISQUALIFIED AND REJECTED. THIS DOES NOT, HOWEVER, DISQUALIFY THE SUB-CONSULTANT, OR THE CONSULTANT'S STAFF FROM PARTICIPATING AS KEY EXPERTS AND NON-KEY EXPERTS IN MORE THAN ONE PROPOSAL.

11.2 MEMBERS OF A JOINT VENTURE MAY NOT ALSO MAKE AN INDIVIDUAL PROPOSAL, BE A SUBCONTRACTOR IN A SEPARATE PROPOSAL OR BE PART OF ANOTHER JOINT VENTURE FOR THE PURPOSES OF THE SAME CONTRACT.

11.3 SHOULD A JOINT VENTURE SUBSEQUENTLY WIN THE CONTRACT, IT SHALL CONSIDER WHETHER AN APPLICATION FOR EXEMPTION FROM THE COMPETITION AUTHORITY OF KENYA IS MERITED PURSUANT TO SECTION 25 OF THE COMPETITION ACT 2010.

12.PROPOSAL VALIDITY

PROPOSAL VALIDITY PERIOD

12.1 THE **DATA SHEET** INDICATES THE PERIOD DURING WHICH THE CONSULTANT'S PROPOSAL MUST REMAIN VALID AFTER THE PROPOSAL SUBMISSION DEADLINE.

12.2 DURING THIS PERIOD, THE CONSULTANT SHALL MAINTAIN ITS ORIGINAL PROPOSAL WITHOUT ANY CHANGE,

12.3 THE AVAILABILITY OF THE KEY EXPERTS, THE PROPOSED RATES AND THE TOTAL PRICE.

12.4 IF IT IS ESTABLISHED THAT ANY KEY EXPERT NOMINATED IN THE CONSULTANT'S PROPOSAL WAS NOT AVAILABLE AT THE TIME OF PROPOSAL SUBMISSION OR WAS INCLUDED IN THE PROPOSAL WITHOUT HIS/HER CONFIRMATION, SUCH PROPOSAL SHALL BE DISQUALIFIED AND REJECTED FOR FURTHER EVALUATION AND MAY BE SUBJECT TO SANCTIONS IN ACCORDANCE WITH IT C5.

B. EXTENSION OF VALIDITY PERIOD

12.5 THE PROCURING ENTITY WILL MAKE ITS BEST EFFORT TO COMPLETE THE NEGOTIATIONS WITHIN THE PROPOSAL'S VALIDITY PERIOD. HOWEVER, SHOULD THE NEED ARISE, THE PROCURING ENTITY MAY REQUEST, IN WRITING, ALL CONSULTANTS WHO SUBMITTED PROPOSALS PRIOR TO THE SUBMISSION DEADLINE TO EXTEND THE PROPOSALS' VALIDITY.

12.6 IF THE CONSULTANT AGREES TO EXTEND THE VALIDITY OF ITS PROPOSAL, IT SHALL BE DONE WITHOUT ANY CHANGE IN THE ORIGINAL PROPOSAL AND WITH THE CONFIRMATION OF THE AVAILABILITY OF THE KEY EXPERTS, EXCEPT AS PROVIDED IN ITC 12.7.

12.7 THE CONSULTANT HAS THE RIGHT TO REFUSE TO EXTEND THE VALIDITY OF ITS PROPOSAL IN WHICH CASE SUCH PROPOSAL WILL NOT BE FURTHER EVALUATED.

C. SUBSTITUTION OF KEY EXPERTS AT VALIDITY EXTENSION

12.8 IF ANY OF THE KEY EXPERTS BECOME UNAVAILABLE FOR THE EXTENDED VALIDITY PERIOD, THE CONSULTANT SHALL PROVIDE A WRITTEN ADEQUATE JUSTIFICATION AND EVIDENCE SATISFACTORY TO THE PROCURING ENTITY TOGETHER WITH THE SUBSTITUTION REQUEST. IN SUCH CASE, A REPLACEMENT KEY EXPERT SHALL HAVE EQUAL OR BETTER QUALIFICATIONS AND EXPERIENCE THAN THOSE OF THE ORIGINALLY PROPOSED KEY EXPERT. THE TECHNICAL EVALUATIONS CORE, HOWEVER, WILL REMAIN TO BE BASED ON THE EVALUATION OF THE CV OF THE ORIGINAL KEY EXPERT.

12.9 IF THE CONSULTANT FAILS TO PROVIDE A SUBSTITUTE KEY EXPERT WITH EQUAL OR BETTER QUALIFICATIONS, OR IF THE PROVIDED REASONS FOR THE REPLACEMENT OR JUSTIFICATION ARE UNACCEPTABLE TO THE PROCURING ENTITY, SUCH PROPOSAL WILL BE REJECTED.

D. SUB-CONTRACTING

12.10 THE CONSULTANT SHALL NOT SUBCONTRACT THE WHOLE OR PART OF THE SERVICES WITHOUT REASONABLE JUSTIFICATION AND WRITTEN APPROVAL OF THE PROCURING ENTITY.

13.CLARIFICATION AND AMENDMENT OF RFP

13.1THE CONSULTANT MAY REQUEST A CLARIFICATION OF ANY PART OF THE RFP DURING THE PERIOD INDICATED IN THE **TDS** BEFORE THE PROPOSALS' SUBMISSION DEADLINE. ANY REQUEST FOR CLARIFICATION MUST BE SENT IN WRITING, OR BY STANDARD ELECTRONIC MEANS, TO THE PROCURING ENTITY'S ADDRESS INDICATED IN THE **DATA SHEET** UNDER ITC 18.5. THE PROCURING ENTITY WILL RESPOND IN WRITING, OR BY STANDARD ELECTRONIC MEANS, AND WILL SEND WRITTEN COPIES OF THE RESPONSE (INCLUDING AN EXPLANATION OF THE QUERY BUT WITHOUT IDENTIFYING ITS SOURCE) TO ALL CONSULTANTS. SHOULD THE PROCURING ENTITY DEEM IT NECESSARY TO AMEND THE RFP AS A RESULT OF A CLARIFICATION, IT SHALL DO SO FOLLOWING THE PROCEDURE DESCRIBED BELOW: IF SO SPECIFIED IN THE **DATA SHEET** THE PROCURING ENTI TY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEB PAGE IDENTIFIED IN THE **DATA SHEET** AND THE STATE TENDER PORTAL.

13.2 AT ANY TIME BEFORE THE PROPOSAL SUBMISSION DEADLINE, THE PROCURING ENTITY MAY AMEND THE RFP BY ISSUING AN AMENDMENT IN WRITING OR BY STANDARD ELECTRONIC MEANS. THE AMENDMENT SHALL BE SENT TO ALL INVITED CONSULTANTS AND WILL BE BINDING ON THEM. THE CONSULTANTS SHALL ACKNOWLEDGE RECEIPT FALL AMENDMENTS IN WRITING.

13.3 IF THE AMENDMENT IS SUBSTANTIAL, THE PROCURING ENTITY MAY EXTEND THE PROPOSAL SUBMISSION DEADLINE TO GIVE THE CONSULTANTS REASONABLE TIME TO TAKE AN AMENDMENT IN TO ACCOUNT IN THEIR PROPOSALS.

13.4 THE CONSULTANT MAY SUBMIT A MODIFIED PROPOSAL OR A MODIFICATION TO ANY PART OF IT AT ANY TIME PRIOR TO THE PROPOSAL SUBMISSION DEADLINE. NO MODIFICATIONS TO THE TECHNICAL OR FINANCIAL PROPOSAL SHALL BE ACCEPTED AFTER THE DEADLINE.

14.PREPARATION OF PROPOSALS–SPECIFIC CONSIDERATIONS

14.1 WHILE PREPARING THE PROPOSAL, THE CONSULTANT MUST GIVE PARTICULAR ATTENTION TO THE FOLLOWING:

(A) IF A CONSULTANT CONSIDERS THAT IT MAY ENHANCE ITS EXPERTISE FOR THE ASSIGNMENT BY ASSOCIATING WITH OTHER CONSULTANTS IN THE FORM OF A JOINT VENTURE OR AS SUB-CONSULTANTS, IT MAY DO SOLON GAS ONLY ONE PROPOSAL IS SUBMITTED, IN ACCORDANCE WITH ITC 11. ABOVE. A CONSULTANT CANNOT ASSOCIATE WITH SHORTLISTED CONSULTANT(S). WHEN ASSOCIATING WITH NON-SHORTLISTED/NON-INVITED FIRMS IN THE FORM OF A JOINT VENTURE OR A SUB-CONSULTANCY, THE SHORTLISTED/INVITED CONSULTANT SHALL BE A LEAD MEMBER. IF SHORTLISTED/INVITED CONSULTANT ASSOCIATES WITH EACH OTHER, ANY OF THEM CAN BE A LEAD MEMBER.

(B) THE PROCURING ENTITY MAY INDICATE IN THE **DATA SHEET** THE ESTIMATED AMOUNT OR KEY EXPERTS' TIME INPUT (EXPRESSED IN PERSON-MONTH), OR THE PROCURING ENTITY'S ESTIMATED TOTAL COST OF THE ASSIGNMENT, BUT NOT BOTH. THIS ESTIMATE IS INDICATIVE AND THE PROPOSAL SHALL BE BASED ON THE CONSULTANT'S OWN ESTIMATES FOR THE SAME. THIS CLAUSE SHALL NOT APPLY WHEN USING FIXED BUDGET SELECTION METHOD.

(C) FOR ASSIGNMENTS UNDER THE FIXED-BUDGET SELECTION METHOD, THE ESTIMATED KEY EXPERTS' TIME INPUT SHALL NOT BE DISCLOSED. TOTAL AVAILABLE BUDGET, WITH AN INDICATION WHETHER IT IS INCLUSIVE OR EXCLUSIVE OF TAXES, IS GIVEN IN THE **DATA SHEET,** AND THE FINANCIAL PROPOSAL SHALL NOT EXCEED THIS BUDGET.

D) KEY EXPERTS SHALL NOT APPEAR IN MORE THAN ONE PROPOSAL UNLESS SO ALLOWED IN THE **DATA SHEET.** INVITED FIRMS MUST CONFIRM AND ENSURE THEIR KEY EXPERTS DO NOT APPEAR IN PROPOSAL OF OTHER INVITED FIRMS, OTHERWISE PROPOSALS WITH KEY EXPERTS APPEARING IN OTHER PROPOSALS WILL BE REJECTED.

(B) THE PROCURING ENTITY MAY INDICATE IN THE **DATA SHEET** THE ESTIMATED AMOUNT OR KEY EXPERTS' TIME INPUT (EXPRESSED IN PERSON-MONTH), OR THE PROCURING ENTITY'S ESTIMATED TOTAL COST OF THE ASSIGNMENT, BUT NOT BOTH. THIS ESTIMATE IS INDICATIVE AND THE PROPOSAL SHALL BE BASED ON THE CONSULTANT'S OWN ESTIMATES FOR THE SAME. THIS CLAUSE SHALL NOT APPLY WHEN USING FIXED BUDGET SELECTION METHOD.

(C) FOR ASSIGNMENTS UNDER THE FIXED-BUDGET SELECTION METHOD, THE ESTIMATED KEY EXPERTS' TIME INPUT SHALL NOT BE DISCLOSED. TOTAL AVAILABLE BUDGET, WITH AN INDICATION WHETHER IT IS INCLUSIVE OR EXCLUSIVE OF TAXES, IS GIVEN IN THE **DATA SHEET,** AND THE FINANCIAL PROPOSAL SHALL NOT EXCEED THIS BUDGET.

D) KEY EXPERTS SHALL NOT APPEAR IN MORE THAN ONE PROPOSAL UNLESS SO ALLOWED IN THE **DATA SHEET.** INVITED FIRMS MUST CONFIRM AND ENSURE THEIR KEY EXPERTS DO NOT APPEAR IN PROPOSAL OF OTHER INVITED FIRMS, OTHERWISE PROPOSALS WITH KEY EXPERTS APPEARING IN OTHER PROPOSALS WILL BE REJECTED.

15.TECHNICAL PROPOSAL FORMAT AND CONTENT

15.1 THE TECHNICAL PROPOSAL SHALL BE PREPARED USING THE STANDARD FORMS PROVIDED IN SECTION 3 OF THE RFP AND SHALL COMPRISE THE DOCUMENTS LISTED IN THE DATA SHEET UNDER ITC10.1.THE TECHNICAL PROPOSAL SHALL NOT INCLUDE ANY FINANCIAL INFORMATION. A TECHNICAL PROPOSAL CONTAINING MATERIAL FINANCIAL INFORMATION SHALL BE DECLARED NON- RESPONSIVE.

15.2 CONSULTANT SHALL NOT PROPOSE ALTERNATIVE KEY EXPERTS. ONLY ONE CV SHALL BE SUBMITTED FOR EACH KEY EXPERT POSITION. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL MAKE THE PROPOSAL NON-RESPONSIVE.

16.FINANCIAL PROPOSAL

16.1 THE FINANCIAL PROPOSAL SHALL BE PREPARED USING THE STANDARD FORMS PROVIDED IN SECTION 4 OF THE RFP. IT SHALL LIST ALL COSTS ASSOCIATED WITH THE ASSIGNMENT, INCLUDING (A) REMUNERATION FOR KEY EXPERTS AND NON-KEY EXPERTS, (B) REIMBURSABLE EXPENSES INDICATED IN THE **DATA SHEET**. IRRESPECTIVE OF THE CONSULTANT SELECTION METHOD, ANY CONSULTANT THAT DOES NOT SUBMIT ITEMIZED AND PRICED FINANCIAL PROPOSAL, OR MERELY REFERS THE PROCURING ENTITY TO OTHER LEGAL INSTRUMENTS FOR THE APPLICABLE MINIMUM REMUNERATION FEES SHALL BE CONSIDERED NON-RESPONSIVE.

16.2 THE TENDER PRICE SHALL BE INCLUSIVE OF A CAPACITY BUILDING LEVY OF ZERO POINT ZERO THREE PER CENTUM (0.03%) OF THE TENDER SUM EXCLUSIVE OF ALL APPLICABLE TAXES.

A. PRICE ADJUSTMENT

16.3 FOR ASSIGNMENTS WITH A DURATION EXCEEDING 18 MONTHS, A PRICE ADJUSTMENT PROVISION FOR FOREIGN AND/OR LOCAL INFLATION FOR REMUNERATION RATES APPLY IF SO, STATED IN THE **DATA SHEET.**

B. TAXES

16.4 THE CONSULTANT AND ITS SUB-CONSULTANTS AND EXPERTS ARE RESPONSIBLE FOR MEETING ALL TAX LIABILITIES ARISING OUT OF THE CONTRACT UNLESS STATED OTHERWISE IN THE **DATA SHEET**. INFORMATION ON TAXES IN KENYA IS PROVIDED IN THE DATA SHEET.

C. CURRENCY OF PROPOSAL

16.5 THE CONSULTANT MAY EXPRESS THE PRICE FOR ITS SERVICES IN THE CURRENCY OR CURRENCIES AS STATED IN THE **DATA SHEET**. IF INDICATED IN THE DATA SHEET, THE PORTION OF THE PRICE REPRESENTING LOCAL COST SHALL BE STATED IN KENYA SHILLINGS.

D. CURRENCY OF PAYMENT

16.6 PAYMENT UNDER THE CONTRACT SHALL BE MADE IN THE CURRENCY OR CURRENCIES IN WHICH THE PAYMENT IS REQUESTED IN THE PROPOSAL.

D. CURRENCY OF PAYMENT

16.6 PAYMENT UNDER THE CONTRACT SHALL BE MADE IN THE CURRENCY OR CURRENCIES IN WHICH THE PAYMENT IS REQUESTED IN THE PROPOSAL.

C.SUBMISSION, OPENING AND EVALUATION

17.SUBMISSION, SEALING, AND MARKING OF PROPOSALS

17.1 THE CONSULTANT SHALL SUBMIT A SIGNED AND COMPLETE PROPOSAL COMPRISING THE DOCUMENTS AND FORMS IN ACCORDANCE WITH ITC 10 (DOCUMENTS COMPRISING PROPOSAL). CONSULTANTS SHALL MARK AS “CONFIDENTIAL” INFORMATION IN THEIR PROPOSALS WHICH IS CONFIDENTIAL TO THEIR BUSINESS. THIS MAY INCLUDE PROPRIETARY INFORMATION, TRADE SECRETS OR COMMERCIAL OR FINANCIALLY SENSITIVE INFORMATION. THE SUBMISSION CAN BE DONE BY MAIL OR BY HAND. PHYSICAL SUBMISSION SHALL NOT BE APPLICABLE FOR TENDERS PROCESSED THROUGH THE E-GP SYSTEM.

17.2 AN AUTHORIZED REPRESENTATIVE OF THE CONSULTANT SHALL SIGN THE ORIGINAL SUBMISSION LETTERS IN THE REQUIRED FORMAT FOR BOTH THE TECHNICAL PROPOSAL AND THE FINANCIAL PROPOSALS AND SHALL INITIAL ALL PAGES OF BOTH. THE AUTHORIZATION SHALL BE IN THE FORM OF A WRITTEN POWER OF ATTORNEY ATTACHED TO THE TECHNICAL PROPOSAL.

17.3 A PROPOSAL SUBMITTED BY A JOINT VENTURE SHALL BE SIGNED BY ALL MEMBERS SO AS TO BE LEGALLY BINDING ON ALL MEMBERS, OR BY AN AUTHORIZED REPRESENTATIVE WHO HAS A WRITTEN POWER OF ATTORNEY SIGNED BY EACH MEMBER'S AUTHORIZED REPRESENTATIVE.

17.4 ANY MODIFICATIONS, REVISIONS, INTERLINEATIONS, ERASURES, OR OVERWRITING SHALL BE VALID ONLY IF THEY ARE SIGNED OR INITIALLED BY THE PERSON SIGNING THE PROPOSAL. CONSULTANTS SHALL BE ALLOWED TO SUBMIT MODIFICATIONS TO BIDS OR PROPOSALS OR WITHDRAW PREVIOUSLY SUBMITTED BIDS OR PROPOSALS ELECTRONICALLY UP TO, BUT NOT AFTER, THE BID SUBMISSION DEADLINE.

17.5 THE SIGNED PROPOSAL SHALL BE MARKED “ORIGINAL”, AND ITS COPIES MARKED “COPY” AS APPROPRIATE. THE NUMBER OF COPIES IS INDICATED IN THE DATA SHEET. ALL COPIES SHALL BE MADE FROM THE SIGNED ORIGINAL. IF THERE ARE DISCREPANCIES BETWEEN THE ORIGINAL AND THE COPIES, THE ORIGINAL SHALL PREVAIL. SUBMISSION OF COPIES OF THE PROPOSAL SHALL NOT APPLY FOR ELECTRONIC PROCUREMENT SYSTEM.

18.SEALING AND MARKING OF PROPOSALS

18.1 THE FIRM SHALL DELIVER THE PROPOSALS IN A SINGLE SEALED ENVELOPE, OR IN A SINGLE SEALED PACKAGE, OR IN A SINGLE SEALED CONTAINER BEARING THE NAME AND REFERENCE NUMBER OF THE ASSIGNMENT, ADDRESSED TO THE PROCURING ENTITY AND A WARNING "DO NOT OPEN BEFORE..... (THE TIME AND DATE FOR PROPOSAL OPENING DATE". WITHIN THE SINGLE ENVELOPE, PACKAGE OR CONTAINER, THE FIRM SHALL PLACE THE FOLLOWING SEPARATE, SEALED ENVELOPES:

18.2 IN THE SINGLE SEALED ENVELOPE, OR IN A SINGLE SEALED PACKAGE, OR IN A SINGLE SEALED CONTAINER THE FOLLOWING DOCUMENTS SHALL BEEN CLOSED AND SHALL BE ADDRESSED AS FOLLOWS:

I) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED "ORIGINAL", ALL DOCUMENTS COMPRISING THE TECHNICAL PROPOSAL, AS DESCRIBED IN ITC 11;

II) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED "COPIES", ALL REQUIRED COPIES OF THE TECHNICAL PROPOSAL.

III) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED "ORIGINAL", ALL REQUIRED COPIES OF THE FINANCIAL PROPOSAL; AND

18.3 THE INNER ENVELOPES OR PACKAGES OR CONTAINERS SHALL:
I) BEAR THE NAME AND ADDRESS OF THE PROCURING ENTITY.
II) BEAR THE NAME AND ADDRESS OF THE FIRM; AND
III) BEAR THE NAME AND REFERENCE NUMBER OF THE ASSIGNMENT.

18.4 IF AN ENVELOPE OR PACKAGE OR CONTAINER IS NOT SEALED AND MARKED AS REQUIRED, THE PROCURING ENTITY WILL ASSUME NO RESPONSIBILITY FOR THE MISPLACEMENT OR PREMATURE OPENING OF THE PROPOSAL.

18.5 THE PROPOSAL OR ITS MODIFICATIONS MUST BE SENT TO THE ADDRESS INDICATED IN THE DATA SHEET AND RECEIVED BY THE PROCURING ENTITY NO LATER THAN THE DEADLINE INDICATED IN THE **DATA SHEET,** OR ANY EXTENSION TO THIS DEADLINE. ANY PROPOSAL OR ITS MODIFICATION RECEIVED BY THE PROCURING ENTITY AFTER THE DEADLINE SHALL BE DECLARED LATE AND REJECTED, AND PROMPTLY RETURNED UNOPENED.

THE PROVISIONS OF CLAUSE 18 SHALL NOT APPLY TO TENDERS SUBMITTED ELECTRONICALLY

19.CONFIDENTIALITY/CANVASSING

19.1 FROM THE TIME THE PROPOSALS ARE OPENED TO THE TIME THE CONTRACT IS AWARDED, THE CONSULTANT SHOULD NOT CONTACT THE PROCURING ENTITY ON ANY MATTER RELATED TO ITS TECHNICAL AND/OR FINANCIAL PROPOSAL. INFORMATION RELATING TO THE EVALUATION OF PROPOSALS AND AWARD RECOMMENDATIONS SHALL NOT BE DISCLOSED TO THE CONSULTANTS WHO SUBMITTED THE PROPOSALS OR TO ANY OTHER PARTY NOT OFFICIALLY CONCERNED WITH THE PROCESS, UNTIL THE PUBLICATION OF THE CONTRACT AWARD INFORMATION.

19.2 ANY ATTEMPT BY CONSULTANTS OR ANY ONE ON BEHALF OF THE CONSULTANT TO INFLUENCE IMPROPERLY THE PROCURING ENTITY IN THE EVALUATION OF THE PROPOSALS OR CONTRACT AWARD DECISIONS MAY RESULT IN THE REJECTION OF ITS PROPOSAL AND MAY BE SUBJECT TO THE APPLICATION OF PREVAILING PPRA'S DEBARMENT PROCEDURES.

19.3 NOTWITHSTANDING THE ABOVE PROVISIONS, FROM THE TIME OF THE PROPOSALS' OPENING TO THE TIME OF CONTRACT AWARD PUBLICATION, IF A CONSULTANT WISHES TO CONTACT THE PROCURING ENTITY ON ANY MATTER RELATED TO THE SELECTION PROCESS, IT SHOULD DO SO ONLY IN WRITING.

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20.OPENING OF TECHNICAL PROPOSALS

20.1 THE PROCURING ENTITY'S OPENING COMMITTEE SHALL CONDUCT THE OPENING OF THE TECHNICAL PROPOSALS IN THE PRESENCE OF THE CONSULTANTS' AUTHORIZED REPRESENTATIVES WHO CHOOSE TO ATTEND (IN PERSON, OR ONLINE IF THIS OPTION IS OFFERED IN THE DATA SHEET). THE OPENING DATE, TIME AND THE ADDRESS ARE STATED IN THE **DATA SHEET**. THE ENVELOPES WITH THE FINANCIAL PROPOSAL SHALL REMAIN SEALED AND SHALL BE SECURELY STORED BY THE PROCURING ENTITY OR WITH A REPUTABLE PUBLIC AUDITOR OR INDEPENDENT AUTHORITY UNTIL THEY ARE OPENED IN ACCORDANCE WITH ITC 22.

20.2 AT THE OPENING OF THE TECHNICAL PROPOSALS THE FOLLOWING SHALL BE READ OUT: (I) THE NAME AND THE COUNTRY OF THE CONSULTANT OR, IN CASE OF A JOINT VENTURE, THE NAME OF THE JOINT VENTURE, THE NAME OF THE LEAD MEMBER AND THE NAMES AND THE COUNTRIES OF ALL MEMBERS; (II) THE PRESENCE OR ABSENCE OF A DULY SEALED ENVELOPE WITH THE FINANCIAL PROPOSAL; (III) ANY MODIFICATIONS TO THE PROPOSAL SUBMITTED PRIOR TO PROPOSAL SUBMISSION DEADLINE; AND (IV) ANY OTHER INFORMATION DEEMED APPROPRIATE OR AS INDICATED IN THE **DATA SHEET**.

21.PROPOSALS EVALUATION

21.1 SUBJECT TO PROVISION OF ITC 15.1, THE VALUATORS OF THE TECHNICAL PROPOSALS SHALL HAVE NO ACCESS TO THE FINANCIAL PROPOSALS UNTIL THE TECHNICAL EVALUATION IS CONCLUDED AND AFTER THE PROCURING ENTITY NOTIFIES ALL THE CONSULTANTS IN ACCORDANCE WITH ITC 22.1.

21.2 THE CONSULTANT IS NOT PERMITTED TO ALTER OR MODIFY ITS PROPOSAL IN ANYWAY AFTER THE PROPOSAL SUBMISSION DEADLINE EXCEPT AS PERMITTED UNDER ITC12.7. WHILE EVALUATING THE PROPOSALS, THE EVALUATION COMMITTEE WILL CONDUCT THE EVALUATION SOLELY ON THE BASIS OF THE SUBMITTED TECHNICAL AND FINANCIAL PROPOSALS.

22.EVALUATION OF TECHNICAL PROPOSALS

22.1THE PROCURING ENTITY'S EVALUATION COMMITTEE SHALL EVALUATE THE TECHNICAL PROPOSALS THAT HAVE PASSED THE ELIGIBILITY AND MANDATORY CRITERIA, ON THE BASIS OF THEIR RESPONSIVENESS TO THE TERMS OF REFERENCE AND THE RFP. THE ELIGIBILITY AND MANDATORY CRITERIA SHALL INCLUDE THE FOLLOWING AND ANY OTHER THAT MAY INCLUDE IN THE **DATA SHEET**

A) FIRM HAS SUBMITTED THE REQUIRED NUMBER OF COPIES OF THE TECHNICAL PROPOSALS.

B) FIRM HAS SUBMITTED A SEALED FINANCIAL PROPOSAL.

C) THE PROPOSAL IS VALID FOR THE REQUIRED NUMBER OF DAYS.

D) THE TECHNICAL PROPOSAL IS SIGNED BY THE PERSON WITH POWER OF ATTORNEY, WITHOUT MATERIAL DEVIATION, RESERVATION, OR OMISSION.

E) THE TECHNICAL PROPOSAL IS COMPLETE WITH ALL THE FORMS AND REQUIRED DOCUMENTARY EVIDENCE SUBMITTED.

F) A VALID TAX COMPLIANCE CERTIFICATE OR TAX EXEMPTION CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY IN ACCORDANCE WITH ITT 3.14 FOR KENYAN FIRMS.

G) KEY EXPERTS ARE FROM ELIGIBLE COUNTRIES.

H) KEY EXPERTS DO NOT APPEAR IN MORE THAN ONE PROPOSAL, IF SO REQUIRED.

I) A SHORT-LISTED FIRM HAS NOT PARTICIPATED IN MORE THAN ONE PROPOSAL, IF SO REQUIRED.

J) THE CONSULTANT IS NOT INSOLVENT, IN RECEIVERSHIP, BANKRUPT OR IN THE PROCESS OF BEING WOUND UP.

K) THE CONSULTANT, ITS SUB-CONSULTANTS AND EXPERTS HAVE NOT ENGAGED IN OR BEEN CONVICTED OF CORRUPT OR FRAUDULENT PRACTICES.

L) THE CONSULTANT IS NEITHER PRECLUDED FROM ENTERING INTO A CONTRACT NOR DEBARRED BY PPRA.

M) THE FIRM HAS NOT PROPOSED EMPLOYING PUBLIC OFFICIALS, CIVIL SERVANTS AND EMPLOYEES OF PUBLIC INSTITUTIONS.

N) THE CONSULTANT, ITS SUB-CONSULTANTS AND EXPERTS HAVE NO CONFLICTS OF INTEREST.

22.2 EACH RESPONSIVE PROPOSAL WILL BE GIVEN A TECHNICAL SCORE. A PROPOSAL SHALL BE REJECTED AT THIS STAGE IF IT DOES NOT RESPOND TO IMPORTANT ASPECTS OF THE RFP OR IF IT FAILS TO ACHIEVE THE MINIMUM TECHNICAL SCORE INDICATED IN THE **TDS**

23.PUBLIC OPENING OF FINANCIAL PROPOSALS

23.1 UNSUCCESSFUL PROPOSALS

AFTER THE TECHNICAL EVALUATION IS COMPLETED, THE PROCURING ENTITY SHALL NOTIFY THOSE CONSULTANTS WHOSE PROPOSALS WERE CONSIDERED NON-RESPONSIVE TO THE RFP AND TOR OR DID NOT MEET THE MINIMUM QUALIFYING TECHNICAL SCORE, ADVISING THEM THE FOLLOWING: (I) THEIR PROPOSAL WAS NOT RESPONSIVE TO THE RFP AND TOR OR DID NOT MEET THE MINIMUM QUALIFYING TECHNICAL SCORE;(II)PROVIDE INFORMATION RELATING TO THE CONSULTANT'S OVERALL TECHNICAL SCORE, AS WELL AS SCORES OBTAINED FOR EACH CRITERION AND SUB-CRITERION; (III) THEIR FINANCIAL PROPOSALS WILL BE RETURNED UNOPENED AFTER COMPLETING THE SELECTION PROCESS AND CONTRACT SIGNING; AND (IV) NOTIFY THEM OF THE DATE, TIME AND LOCATION OF THE PUBLIC OPENING OF THE FINANCIAL PROPOSALS AND INVITE THEM TO ATTEND.

23.2 FINANCIAL PROPOSALS FOR QBS, CQS AND SSS

FOLLOWING THE RANKING OF THE TECHNICAL PROPOSALS, WHEN THE SELECTION IS BASED ON QBS OR CQS, THE TOP-RANKED CONSULTANT IS INVITED TO NEGOTIATE THE CONTRACT. ONLY THE FINANCIAL PROPOSAL OF THE TECHNICALLY TOP-RANKED CONSULTANT IS OPENED BY THE OPENING COMMITTEE. ALL OTHER FINANCIAL PROPOSALS SHALL BE RETURNED UNOPENED AFTER THE CONTRACT NEGOTIATIONS ARE SUCCESSFULLY CONCLUDED AND THE CONTRACT IS SIGNED WITH THE SUCCESSFUL CONSULTANT.

WHEN THE SELECTION IS BASED ON THE SSS METHOD AND IF THE INVITED CONSULTANT MEETS THE MINIMUM TECHNICAL SCORE REQUIRED PASSING, THE FINANCIAL PROPOSAL SHALL BE OPENED AND THE CONSULTANT INVITED TO NEGOTIATE THE CONTRACT.

23.3 FINANCIAL PROPOSALS FOR QCBS, FBS, LCS

FOLLOWING THE RANKING OF THE TECHNICAL PROPOSALS, AND AFTER INTERNAL APPROVALS, THE PROCURING ENTITY SHALL SIMULTANEOUSLY NOTIFY IN WRITING THOSE CONSULTANTS WHOSE PROPOSALS WERE CONSIDERED RESPONSIVE TO THE RFP AND TOR, AND THAT HAVE ACHIEVED THE MINIMUM QUALIFYING TECHNICAL SCORE, ADVISING THEM THE FOLLOWING: (I) THEIR PROPOSAL WAS RESPONSIVE TO THE RFP AND TOR AND MET THE MINIMUM QUALIFYING TECHNICAL SCORE; (II) PROVIDE INFORMATION RELATING TO THE CONSULTANT'S OVERALL TECHNICAL SCORE, AS WELL AS SCORES OBTAINED FOR EACH CRITERION AND SUB-CRITERION; (III) THEIR FINANCIAL PROPOSAL WILL BE OPENED AT THE PUBLIC OPENING OF FINANCIAL PROPOSALS; AND (IV) NOTIFY THEM OF THE DATE, TIME AND LOCATION OF THE PUBLIC OPENING AND INVITE THEM FOR THE OPENING OF THE FINANCIAL PROPOSALS.

23.4 OPENING OF FINANCIAL PROPOSALS

THE OPENING DATE SHOULD ALLOW THE CONSULTANTS SUFFICIENT TIME TO DECIDE FOR ATTENDING THE OPENING AND SHALL BE NO LESS THAN FIVE (5) BUSINESS DAYS FROM THE DATE OF NOTIFICATION OF THE RESULT S OF THE TECHNICAL EVALUATION, DESCRIBED IN ITC 22.1 AND 22.2.

THE CONSULTANT'S ATTENDANCE AT THE OPENING OF THE FINANCIAL PROPOSALS (IN PERSON, OR ONLINE IF SUCH OPTION IS INDICATED IN THE DATA SHEET) IS OPTIONAL AND IS AT THE CONSULTANT'S CHOICE.

THE FINANCIAL PROPOSALS SHALL BE OPENED PUBLICLY BY THE PROCURING ENTITY'S OPENING COMMITTEE IN THE PRESENCE OF THE REPRESENTATIVES OF THE CONSULTANTS AND ANYONE ELSE WHO CHOOSES TO ATTEND. ANY INTERESTED PARTY WHO WISHES TO ATTEND THIS PUBLIC OPENING SHOULD CONTACT THE PROCURING ENTITY AT THE CONTACTS AS INDICATED IN THE DATA SHEET UNDER ITC 18.5. AT THE OPENING, THE NAMES OF THE CONSULTANTS, AND THE OVERALL TECHNICAL SCORES, INCLUDING THE BREAK-DOWN BY CRITERION, SHALL BE READ ALOUD. THE FINANCIAL PROPOSALS WILL THEN BE INSPECTED TO CONFIRM THAT THEY HAVE REMAINED SEALED AND UNOPENED. THESE FINANCIAL PROPOSALS SHALL BE THEN OPENED, AND THE TOTAL PRICES READ ALOUD AND RECORDED. COPIES OF THE RECORD SHALL BE SENT TO ALL CONSULTANTS WHO SUBMITTED PROPOSALS.

23.4 OPENING OF FINANCIAL PROPOSALS

THE OPENING DATE SHOULD ALLOW THE CONSULTANTS SUFFICIENT TIME TO DECIDE FOR ATTENDING THE OPENING AND SHALL BE NO LESS THAN FIVE (5) BUSINESS DAYS FROM THE DATE OF NOTIFICATION OF THE RESULT S OF THE TECHNICAL EVALUATION, DESCRIBED IN **ITC 22.1 AND 22.2.**

THE FINANCIAL PROPOSALS SHALL BE OPENED PUBLICLY BY THE PROCURING ENTITY'S OPENING COMMITTEE IN THE PRESENCE OF THE REPRESENTATIVES OF THE CONSULTANTS AND ANYONE ELSE WHO CHOOSES TO ATTEND. AT THE OPENING, THE NAMES OF THE CONSULTANTS, AND THE OVERALL TECHNICAL SCORES, INCLUDING THE BREAK-DOWN BY CRITERION, SHALL BE READ ALOUD. THE FINANCIAL PROPOSALS WILL THEN BE INSPECTED TO CONFIRM THAT THEY HAVE REMAINED SEALED AND UNOPENED. THESE FINANCIAL PROPOSALS SHALL BE THEN OPENED, AND THE TOTAL PRICES READ ALOUD AND RECORDED. COPIES OF THE RECORD SHALL BE SENT TO ALL CONSULTANTS WHO SUBMITTED PROPOSALS.

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24.CORRECTION OF ERRORS

24.1 ACTIVITIES AND ITEMS DESCRIBED IN THE TECHNICAL PROPOSAL BUT NOT PRICED IN THE FINANCIAL PROPOSAL, SHALL BE ASSUMED TO BE INCLUDED IN THE PRICES OF OTHER ACTIVITIES OR ITEMS, AND NO CORRECTIONS ARE MADE TO THE FINANCIAL PROPOSAL.

24.2 TIME-BASED CONTRACTS-IF A TIME-BASED CONTRACT FORM IS INCLUDED IN THE RFP, IN CASE OF DISCREPANCY BETWEEN (I) A PARTIAL AMOUNT(SUB-TOTAL) AND THE TOTAL AMOUNT, OR (II)BETWEEN THE AMOUNT DERIVED BY MULTIPLICATION OF UNIT PRICE WITH QUANTITY AND THE TOTAL PRICE, OR (III) BETWEEN FIGURES AND WORDS, THE LATER WILL PREVAIL. IN CASE OF DISCREPANCY BETWEEN THE TECHNICAL AND FINANCIAL PROPOSALS IN INDICATING QUANTITIES OF INPUT, THE TECHNICAL PROPOSAL PREVAILS AND THE PROCURING ENTITY'S EVALUATION COMMITTEE SHALL CORRECT THE QUANTIFICATION INDICATED IN THE FINANCIAL PROPOSAL SO AS TO MAKE IT CONSISTENT WITH THAT INDICATED IN THE TECHNICAL PROPOSAL, APPLY THE RELEVANT UNIT PRICE INCLUDED IN THE FINANCIAL PROPOSAL TO THE CORRECTED QUANTITY, AND CORRECT THE TOTAL PROPOSAL COST.

24.3 LUMP-SUM CONTRACTS - IF A LUMP-SUM CONTRACT FORM IS INCLUDED IN THE RFP, THE CONSULTANT IS DEEMED TO HAVE INCLUDED ALL PRICES IN THE FINANCIAL PROPOSAL, SO NEITHER ARITHMETICAL CORRECTION NOR PRICE ADJUSTMENTS SHALL BE MADE. THE TOTAL PRICE, NET OF TAXES UNDERSTOOD AS PER ITC 24 BELOW, SPECIFIED IN THE FINANCIAL PROPOSAL (FORM FIN-1) SHALL BE CONSIDERED AS THE OFFERED PRICE.

25.TAXES

25.1SUBJECT TO ITC 24.2, ALL TAXES ARE DEEMED TO BE INCLUDED IN THE CONSULTANT'S FINANCIAL PROPOSAL AS SEPARATE ITEMS, AND, THEREFORE, CONSIDERED IN THE EVALUATION

25.2 ALL LOCAL IDENTIFIABLE TAXES LEVIED ON THE CONTRACT IN VOICES (SUCH AS SALES TAX, VAT, EXCISE TAX, OR ANY SIMILAR TAXES OR LEVIES) AND IN COME AND WITHHOLDING TAX PAYABLE TO KENYA ON THE REMUNERATION OF NON-RESIDENT EXPERTS FOR THE SERVICES RENDERED IN KENYA ARE DEALT WITH IN ACCORDANCE WITH THE INSTRUCTIONS IN THE **DATA SHEET.**

26.CONVERSION TO SINGLE CURRENCY

26.1 FOR THE EVALUATION PURPOSES, PRICES SHALL BE CONVERTED TO A SINGLE CURRENCY USING THE SELLING RATES OF EXCHANGE, SOURCE AND DATE INDICATED IN THE **DATA SHEET**.

27.ABNORMALLY LOW PRICES

27.1 AN ABNORMALLY LOW PRICE IS ONE WHERE THE FINANCIAL PRICE, IN COMBINATION WITH OTHER CONSTITUENT ELEMENTS OF THE PROPOSAL, APPEARS UNREASONABLY LOW TO THE EXTENT THAT THE PRICE RAISES MATERIAL CONCERNS WITH THE PROCURING ENTITY AS TO THE CAPABILITY OF THE CONSULTING FIRM TO PERFORM THE CONTRACT FOR THE OFFERED PRICE.

27.2 IN THE EVENT OF IDENTIFICATION OF A POTENTIALLY ABNORMALLY LOW PRICE BY THE EVALUATION COMMITTEE, THE PROCURING ENTITY SHALL SEEK WRITTEN CLARIFICATION FROM THE FIRM, INCLUDING A DETAILED PRICE ANALYSES OF ITS PRICE IN RELATION TO THE SUBJECT MATTER OF THE CONTRACT, SCOPE, DELIVERY SCHEDULE, ALLOCATION OF RISK SAND RESPONSIBILITIES AND ANY OTHER REQUIREMENTS OF THE RFP DOCUMENT.

27.3 AFTER EVALUATION OF THE PRICE ANALYSES, IF THE PROCURING ENTITY DETERMINES THAT THE FIRM HAS FAILED TO DEMONSTRATE ITS CAPABILITY TO PERFORM THE CONTRACT FOR THE OFFERED PRICE, THE PROCURING ENTITY SHALL REJECT THE FIRM'S PROPOSAL

28.ABNORMALLY HIGH PRICES

28.1 AN ABNORMALLY HIGH PRICE IS ONE WHERE THE PROPOSAL PRICE, IN COMBINATION WITH OTHER CONSTITUENT ELEMENTS OF THE PROPOSAL, APPEARS UNREASONABLY TOO HIGH TO THE EXTENT THAT THE PROCURING ENTITY IS CONCERNED THAT IT (THE PROCURING ENTITY) MAY NOT BE GETTING VALUE FOR MONEY OR IT MAY BE PAYING TOO HIGH A PRICE FOR THE CONTRACT COMPARED WITH MARKET PRICES OR THAT GENUINE COMPETITION BETWEEN CONSULTANTS IS COMPROMISED.

28.2 IN CASE OF AN ABNORMALLY HIGH TENDER PRICE, THE PROCURING ENTITY SHALL MAKE A SURVEY OF THE MARKET PRICES, CHECK IF THE ESTIMATED COST OF THE CONTRACT IS CORRECT, AND REVIEW THE RFP TO CHECK IF THE SPECIFICATIONS, TOR, SCOPE OF WORK AND CONDITIONS OF CONTRACT ARE CONTRIBUTORY TO THE ABNORMALLY HIGH PROPOSALS. THE PROCURING ENTITY MAY ALSO SEEK WRITTEN CLARIFICATION FROM THE CONSULTANTS ON THE REASON OR THE HIGH PROPOSAL PRICE. THE PROCURING ENTITY SHALL PROCEED AS FOLLOWS:

I) IF THE PROPOSAL PRICE IS ABNORMALLY HIGH BASED ON WRONG ESTIMATED COST OF THE CONTRACT, THE PROCURING ENTITY MAY ACCEPT OR NOT ACCEPT THE PROPOSAL DEPENDING ON THE PROCURING ENTITY'S BUDGET CONSIDERATIONS.

II) IF SPECIFICATIONS, TOR, SCOPE OF WORK AND/OR CONDITIONS OF CONTRACT ARE CONTRIBUTORY TO THE ABNORMALLY HIGH PROPOSAL PRICES, THE PROCURING ENTITY SHALL REJECT ALL PROPOSALS AND MAY RE-INVITE FOR PROPOSALS FOR THE CONTRACT BASED ON REVISED ESTIMATES, SPECIFICATIONS, TOR, SCOPE OF WORK AND CONDITIONS OF CONTRACT.

28.3 IF THE PROCURING ENTITY DETERMINES THAT THE PROPOSAL PRICE IS ABNORMALLY TOO HIGH BECAUSE GENUINE COMPETITION BETWEEN CONSULTANTS IS COMPROMISED (OFTEN DUE TO COLLUSION, CORRUPTION OR OTHER MANIPULATIONS), THE PROCURING ENTITY SHALL REJECT ALL PROPOSALS AND SHALL INSTITUTE OR CAUSE COMPETENT GOVERNMENT AGENCIES TO INSTITUTE AN INVESTIGATION ON THE CAUSE OF THE COMPROMISE, BEFORE RE-INVITING FOR PROPOSALS.

29.COMBINED QUALITY AND COST EVALUATION

A. QUALITY AND COST BASED SELECTION (QCBS) METHOD

29.1 IN THE CASE OF QUALITY AND COST BASED SELECTION (QCBS), THE TOTAL SCORE IS CALCULATED BY WEIGHTING THE TECHNICAL AND FINANCIAL SCORES AND ADDING THEM AS PER THE FORMULA AND INSTRUCTIONS IN THE DATA SHEET. THE CONSULTANT THAT ACHIEVES THE HIGHEST COMBINED TECHNICAL AND FINANCIAL SCORE WILL BE NOTIFIED AND INVITED FOR NEGOTIATIONS.

B. FIXED BUDGET SELECTION (FBS) METHOD

29.2 IN THE CASE OF FBS, THOSE PROPOSALS THAT EXCEED THE BUDGET INDICATED IN ITC 14.1.4 OF THE DATA SHEET SHALL BE REJECTED. THE PROCURING ENTITY'S EVALUATION COMMITTEE WILL SELECT THE CONSULTANT WITH THE HIGHEST-RANKED TECHNICAL PROPOSAL THAT DOES NOT EXCEED THE BUDGET INDICATED IN THE RFP, NOTIFY AND INVITE SUCH CONSULTANT TO NEGOTIATE THE CONTRACT.

C.LEAST COST SELECTION (LCS) METHOD

29.3 IN THE CASE OF LEAST-COST SELECTION (LCS), THE PROCURING ENTITY'S EVALUATION COMMITTEE WILL SELECT THE CONSULTANT WHOSE PROPOSAL IS THE LOWEST EVALUATED TOTAL PRICE AMONG THOSE PROPOSALS THAT ACHIEVE THE MINIMUM TECHNICAL SCORE REQUIRED TO PASS, NOTIFY THE CONSULTANT AND INVITE THE CONSULTANT TO NEGOTIATE THE CONTRACT.

D. COMBINED TECHNICAL AND EVALUATION REPORT

29.4 THE EVALUATION COMMITTEE SHALL PREPARE A COMBINED TECHNICAL AND FINANCIAL EVALUATION REPORT, WITH SPECIFIC RECOMMENDATIONS FOR AWARD OR OTHERWISE AND SUBJECT TO THE REQUIRED APPROVALS WITHIN THE PROCURING ENTITY PRIOR TO NOTIFICATIONS AND INVITATION OF CONSULTANT FOR NEGOTIATIONS.

30.NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT/NOTIFICATION OF AWARD

30.1 THE PROCURING ENTITY SHALL SEND TO EACH CONSULTANT (THAT HAS NOT ALREADY BEEN NOTIFIED THAT IT HAS BEEN UNSUCCESSFUL) THE NOTIFICATION OF INTENTION TO AWARD THE CONTRACT TO THE SUCCESSFUL CONSULTANT. THE NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT / NOTIFICATION OF AWARD SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION:

I) THE NAME AND ADDRESS OF THE CONSULTANT WITH WHOM THE PROCURING ENTITY SUCCESSFULLY NEGOTIATED A CONTRACT;
II) THE CONTRACT PRICE OF THE SUCCESSFUL PROPOSAL.
III) A STATEMENT OF THE REASONS WHY THE RECIPIENT'S PROPOSAL WAS UNSUCCESSFUL
IV) THE EXPIRY DATE OF THE STANDSTILL PERIOD, AND
V) INSTRUCTIONS ON HOW TO REQUEST A DEBRIEFING AND/OR SUBMIT A COMPLAINT DURING THE STANDSTILL PERIOD;

31.STANDSTILL PERIOD

31.1 THE STANDSTILL PERIOD SHALL BE THE NUMBER OF DAYS STATED IN THE DATA SHEET. THE STANDSTILL PERIOD COMMENCES THE DAY AFTER THE DATE THE PROCURING ENTITY HAS TRANSMITTED TO EACH CONSULTANT (THAT HAS NOT ALREADY BEEN NOTIFIED THAT IT HAS BEEN UNSUCCESSFUL) THE NOTIFICATION OF INTENTION TO AWARD THE CONTRACT. THE CONTRACT SHALL NOT BE SIGNED EARLIER THAN THE EXPIRY OF THE STANDSTILL PERIOD. THIS PERIOD SHALL BE ALLOWED FOR AGGRIEVED CONSULTANTS TO LODGE AN APPEAL. THE PROCEDURE FOR APPEAL AND THE AUTHORITY TO DETERMINE THE APPEAL OR COMPLAINT IS AS INDICATED IN THE **DATA SHEET**.

D.NEGOTIATIONS AND AWARD

32.NEGOTIATIONS

32.1 THE NEGOTIATIONS WILL BE HELD AT THE DATE AND ADDRESS INDICATED IN THE **DATA SHEET** WITH THE CONSULTANT'S REPRESENTATIVE(S) WHO MUST HAVE WRITTEN POWER OF ATTORNEY TO NEGOTIATE AND SIGN A CONTRACT ON BEHALF OF THE CONSULTANT

32.2 THE EVALUATION COMMITTEE SHALL PREPARE MINUTES OF NEGOTIATIONS THAT ARE SIGNED BY THE ACCOUNTING OFFICER AND THE CONSULTANT'S AUTHORIZED REPRESENTATIVE.

32.3 AVAILABILITY OF KEY EXPERTS

THE INVITED CONSULTANT SHALL CONFIRM THE AVAILABILITY OF ALL KEY EXPERTS INCLUDED IN THE PROPOSAL AS A PRE-REQUISITE TO THE NEGOTIATIONS, OR, IF APPLICABLE, A REPLACEMENT IN ACCORDANCE WITH ITC 12. FAILURE TO CONFIRM THE KEY EXPERTS' AVAILABILITY MAY RESULT IN THE REJECTION OF THE CONSULTANT'S PROPOSAL AND THE PROCURING ENTITY PROCEEDING TO NEGOTIATE THE CONTRACT WITH THE NEXT-RANKED CONSULTANT.

32.4 NOTWITHSTANDING THE ABOVE, THE SUBSTITUTION KEY EXPERTS AT THE NEGOTIATIONS MAY BE CONSIDERED IF DUE SOLELY TO CIRCUMSTANCES OUTSIDE THE REASONABLE CONTROL OF AND NOT FORESEEABLE BY THE CONSULTANT, INCLUDING BUT NOT LIMITED TO DEATH OR MEDICAL IN CAPACITY. IN SUCH CASE, THE CONSULTANT SHALL OFFER A SUBSTITUTE KEY EXPERT WITHIN THE PERIOD OF TIME SPECIFIED IN THE LETTER OF INVITATION TO NEGOTIATE THE CONTRACT, WHO SHALL HAVE EQUIVALENT OR BETTER QUALIFICATIONS AND EXPERIENCE THAN THE ORIGINAL CANDIDATE.

32.5 TECHNICAL NEGOTIATIONS

THE TECHNICAL NEGOTIATIONS INCLUDE DISCUSSIONS OF THE TERMS OF REFERENCE (TORS), THE PROPOSED METHODOLOGY, THE PROCURING ENTITY'S INPUTS, THE SPECIAL CONDITIONS OF THE CONTRACT, AND FINALIZING THE “DESCRIPTION OF SERVICES” PART OF THE CONTRACT. THESE DISCUSSIONS SHALL NOT SUBSTANTIALLY ALTER THE ORIGINAL SCOPE OF SERVICES UNDER THE TOR OR THE TERMS OF THE CONTRACT, LEST THE QUALITY OF THE FINAL PRODUCT, ITS PRICE, OR THE RELEVANCE OF THE INITIAL EVALUATION BE AFFECTED.

32.6 FINANCIAL NEGOTIATIONS

THE FINANCIAL NEGOTIATIONS INCLUDE THE CLARIFICATION OF THE CONSULTANT'S TAX LIABILITY IN KENYA AND HOW IT SHOULD BE REFLECTED IN THE CONTRACT. ALL APPLICABLE TAXES SHALL BE ITEMIZED SEPARATELY AND INCLUDED IN THE CONTRACT PRICE.

32.7 IF THE SELECTION METHOD INCLUDED COST AS A FACTOR IN THE EVALUATION (THAT IS QCBS, FBS, LCS), THE UNIT RATES AND THE TOTAL PRICE STATED IN THE FINANCIAL PROPOSAL FOR A LUMP-SUM CONTRACT SHALL NOT BE NEGOTIATED.

32.8 WHERE QBS OR CQS METHODS WAS USED FOR A LUMP-SUM CONTRACT AS INDICATED IN THE RFP, THE UNIT RATES NEGOTIATIONS SHALL NOT TAKE PLACE, EXCEPT WHEN THE OFFERED KEY EXPERTS AND NON-KEY EXPERTS' REMUNERATION RATES ARE MUCH HIGHER THAN THE TYPICALLY CHARGED RATES BY CONSULTANTS IN SIMILAR CONTRACTS OR THE PROFESSIONAL PRACTICE. IN SUCH CASE, THE PROCURING ENTITY MAY ASK FOR CLARIFICATIONS AND, IF THE FEES ARE VERY HIGH, ASK TO CHANGE THE RATES. THE FORMAT FOR (I) PROVIDING INFORMATION ON REMUNERATION RATES IN THE CASE OF QB SAND CQS; AND (II) CLARIFYING REMUNERATION RATES' STRUCTURE UNDER THIS CLAUSE, IS PROVIDED IN APPENDIX A TO THE FINANCIAL FORM FIN-3: FINANCIAL NEGOTIATIONS – BREAKDOWN OF REMUNERATION RATES. IF AFTER THE CLARIFICATIONS, THE PRICE IS STILL CONSIDERED TOO HIGH, THE PROCURING ENTITY MAY TERMINATE THE NEGOTIATION AND INVITE THE NEXT RANKED CONSULTANT TO OPEN ITS FINANCIAL PROPOSAL AND NEGOTIATE THE CONTRACT.

32.9 IN THE CASE OF A TIME- BASED CONTRACT, NEGOTIATION OF UNIT RATES SHALL NOT TAKE PLACE, EXCEPT WHEN THE OFFERED KEY EXPERTS AND NON-KEY EXPERTS' REMUNERATION RATES ARE MUCH HIGHER THAN THE TYPICALLY CHARGED RATES BY CONSULTANTS IN SIMILAR CONTRACTS. IN SUCH CASE, THE PROCURING ENTITY MAY ASK FOR CLARIFICATIONS AND, IF THE FEES ARE VERY HIGH, ASK TO CHANGE THE RATES. THE FORMAT FOR (I) PROVIDING INFORMATION ON REMUNERATION RATES IN THE CASE OF QBS AND CQS; AND (II) CLARIFYING REMUNERATION RATES 'STRUCTURE UNDER THIS CLAUSE, IS PROVIDED IN APPENDIX A TO THE FINANCIAL FORM FIN-3: FINANCIAL NEGOTIATIONS-BREAKDOWN OF REMUNERATION RATES. IF AFTER THE CLARIFICATIONS, THE PRICE IS STILL CONSIDERED TOO HIGH, THE PROCURING ENTITY MAY TERMINATE THE NEGOTIATION AND INVITE THE NEXT RANKED CONSULTANT FOR NEGOTIATIONS.

32.10 WHERE SSS METHOD WAS USED AS INDICATED IN THE RFP, BOTH THE UNIT RATES AND TOTAL PRICE SHALL BE NEGOTIATED. IF THE NEGOTIATIONS FAIL, THE PROCURING ENTITY SHALL TERMINATE THE CONSULTANT SELECTION PROCESS. IN THAT EVENT, THE PROCURING ENTITY SHALL REVIEW THE CONSULTANCY REQUIREMENTS AND MARKET CONDITIONS PRIOR TO DECIDING TO USE AN APPROPRIATE SELECTION METHOD TO AGAIN PROCURE THE CONSULTING SERVICES.

33.CONCLUSION OF NEGOTIATIONS

33.1 THE NEGOTIATIONS ARE CONCLUDED WITH A REVIEW OF THE FINALIZED DRAFT CONTRACT, WHICH THEN SHALL BE INITIALLED BY THE ACCOUNTING OFFICER AND THE CONSULTANT'S AUTHORIZED REPRESENTATIVE AND MINUTES PREPARED TO RECORD THE OUTCOME OF THE NEGOTIATIONS.

33.2 IF THE NEGOTIATIONS FAIL, THE PROCURING ENTITY SHALL INFORM THE CONSULTANT IN WRITING OF ALL PENDING ISSUES AND DISAGREEMENTS AND PROVIDE A FINAL OPPORTUNITY TO THE CONSULTANT TO RESPOND. IF DISAGREEMENT PERSISTS, THE PROCURING ENTITY SHALL TERMINATE THE NEGOTIATIONS INFORMING THE CONSULTANT OF THE REASONS FOR DOING SO. THE PROCURING ENTITY WILL INVITE THE NEXT-RANKED CONSULTANT TO NEGOTIATE A CONTRACT. ONCE THE PROCURING ENTITY COMMENCES NEGOTIATIONS WITH THE NEXT-RANKED CONSULTANT, THE PROCURING ENTITY SHALL NOT REOPEN THE EARLIER NEGOTIATIONS.

34.LETTER OF AWARD

34.1 UPON EXPIRY OF THE STANDSTILL PERIOD, SPECIFIED IN ITC 28.1, AFTER SATISFACTORILY ADDRESSING ANY APPEAL THAT HAS BEEN FILED WITHIN THE STANDSTILL PERIOD, AND UPON SUCCESSFUL NEGOTIATIONS, THE PROCURING ENTITY SHALL SEND A LETTER OF AWARD TO THE SUCCESSFUL CONSULTANT. THE LETTER SHALL CONFIRM THE PROCURING ENTITY'S AWARD OF CONTRACT TO THE SUCCESSFUL CONSULTANT AND REQUESTING THE CONSULTANT TO SIGN AND RETURN THE DRAFT NEGOTIATED CONTRACT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF THE LETTER OF AWARD.

35.SIGNING OF CONTRACT

35.1 THE CONTRACT SHALL BE SIGNED PRIOR TO THE EXPIRATION OF THE PROPOSAL VALIDITY PERIOD AND PROMPTLY AFTER EXPIRY OF THE STANDSTILL PERIOD, SPECIFIED IN ITC 28.1 AND UPON SATISFACTORILY ADDRESSING ANY COMPLAINT THAT HAS BEEN FILED WITHIN THE STANDSTILL PERIOD.

35.2 THE CONSULTANT IS EXPECTED TO COMMENCE THE ASSIGNMENT ON THE DATE AND AT THE LOCATION SPECIFIED IN THE DATA SHEET.

36.PUBLICATION OF PROCUREMENT CONTRACT

36.1 WITHIN THE PERIOD SPECIFIED IN THE DATA SHEET, THE PROCURING ENTITY SHALL PUBLISH THE AWARDED CONTRACT ON THE STATE TENDER PORTAL, ENTITY WEBSITE AND ITS NOTICEBOARD WHICH SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION: (A) NAME AND ADDRESS OF THE PROCURING ENTITY; (B) NAME AND REFERENCE NUMBER OF THE CONTRACT BEING AWARDED, (C) THE SELECTION METHOD USED; (D) NAMES OF THE CONSULTANTS THAT SUBMITTED PROPOSALS; (E) NAMES OF ALL CONSULTANTS WHOSE PROPOSALS WERE REJECTED OR WERE NOT EVALUATED; (F) THE NAME OF THE SUCCESSFUL CONSULTANT, THE FINAL TOTAL CONTRACT PRICE, THE CONTRACT DURATION AND A SUMMARY OF ITS SCOPE.

36.2 CONSIDER CAREFULLY THE INFORMATION ON CONSULTANTS TO BE PUBLISHED, PARTICULARLY EVALUATION BY THE PROCURING ENTITY, TO AVOID DISCLOSING INFORMATION WHICH CAN FACILITATE BID-RIGGING FORMATION GOING FORWARD. SUGGEST AMENDMENT AS FOLLOWS:

36.3 THE AWARDED CONTRACT SHALL BE PUBLISHED ON THE PROCURING ENTITY'S WEBSITE WITH FREE ACCESS IF AVAILABLE AND IN THE OFFICIAL PROCUREMENT TENDER PORTAL.

37.PROCUREMENT RELATED COMPLAINT AND ADMINISTRATIVE REVIEW

37.1 THE PROCEDURES FOR MAKING PROCUREMENT-RELATED COMPLAINTSARE AVAILABLE ON THE PPRA WEBSITE -WWW.PPRA.GO.KE

37.2 A REQUEST FOR ADMINISTRATIVE REVIEW SHALL BE MADE IN THE FORM FOR REVIEW PROVIDED UNDER CONTRACT FORMS.

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SECTION 2B: DATA SHEET

Tender Data Sheet (TDS)

	ITT Reference & TDS Detail	Filled By	Value to be Auto Populated in Tender Document
ITT Reference	**2. INTRODUCTION** 2.1 THE PROCURING ENTITY NAMED IN THE **DATA SHEET** INTENDS TO SELECT A CONSULTANT FROM THOSE LISTED IN THE REQUEST FOR PROPOSALS (RFP), IN ACCORDANCE WITH THE METHOD OF SELECTION SPECIFIED IN THE **DATA SHEET**.	-	-
TDS Detail	NAME OF THE PROCURING ENTITY: _____	Auto Populate	ENERGY & PETROLEUM REGULATORY AUTHORITY

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TDS Detail	THE CONSULTANT SELECTION METHOD IS: *[PROCURING ENTITY TO CHOOSE ONE OF THE SELECTION METHODS BY PLACING AN X]* QUALITY AND COST BASED SELECTION METHOD (QCBS) [...] QUALITY BASED SELECTION METHOD (QBS) [...] LEAST COST SELECTION METHOD (LCS) [...] CONSULTANT QUALIFICATION SELECTION METHOD (CQS) [...] FIXED BUDGET SELECTION METHOD (FBS) [...] SINGLE SOURCE SELECTION METHOD (SSS) [...]	Manual Input	QUALITY AND COST BASED SELECTION METHOD
ITT Reference	2.2 THE CONSULTANTS ARE INVITED TO SUBMIT A TECHNICAL PROPOSAL AND A FINANCIAL PROPOSAL AS SPECIFIED IN THE DATA SHEET, FOR CONSULTING SERVICES REQUIRED FOR THE ASSIGNMENT NAMED IN THE DATA SHEET. THE PROPOSAL WILL BE THE BASIS FOR NEGOTIATING AND ULTIMATELY SIGNING THE CONTRACT WITH THE SELECTED CONSULTANT.	-	-

TDS Detail	FINANCIAL PROPOSAL TO BE SUBMITTED TOGETHER WITH TECHNICAL PROPOSAL IN SEPARATE ENVELOPES: YES ____ NO ____ [SELECT ONE OPTION]	Manual Input	YES
TDS Detail	THE NAME OF THE ASSIGNMENT IS: _____	Auto Populate	CONSULTANCY SERVICES FOR STUDY OF THE KENYA ELECTRIC POWER SYSTEM
ITT Reference	2.3 THE CONSULTANTS SHOULD FAMILIARIZE THEMSELVES WITH THE LOCAL CONDITIONS AND TAKE THEM INTO ACCOUNT IN PREPARING THEIR PROPOSALS, INCLUDING ATTENDING A PRE-PROPOSAL CONFERENCE IF ONE IS SPECIFIED IN THE DATA SHEET. ATTENDING ANY SUCH PRE-PROPOSAL CONFERENCE IS OPTIONAL AND IS AT THE CONSULTANTS' EXPENSES.	-	-

TDS Detail	A PRE-PROPOSAL MEETING WILL BE HELD: YES OR NO __ *[IF "YES", FILL IN THE FOLLOWING:]* DATE OF PRE-PROPOSAL MEETING _____ TIME: _____ ADDRESS: TELEPHONE: E-MAIL: TITLE OF CONTACT PERSON: _____ *, OR A LINK IF THE MEETING WILL BE HELD VIRTUALLY)*	Manual Input	NO
ITT Reference	2.4 THE PROCURING ENTITY WILL TIMELY PROVIDE, AT NO COST TO THE CONSULTANTS, THE INPUTS, RELEVANT PROJECT DATA, AND REPORTS REQUIRED FOR THE PREPARATION OF THE CONSULTANT'S PROPOSAL AS SPECIFIED IN THE DATA SHEET.	-	-
TDS Detail	THE PROCURING ENTITY WILL PROVIDE THE FOLLOWING INPUTS, PROJECT DATA, REPORTS, ETC. TO FACILITATE THE PREPARATION OF THE PROPOSALS: ___ [LIST OR STATE "N/A" IF NONE] _____	Manual Input	AS PER SCHEDULE OF REQUIREMENTS

ITT Reference	**3.CONFLICT OF INTEREST** IV) OTHERS ANY OTHER TYPES OF CONFLICTING RELATIONSHIPS AS INDICATED IN THE **DATA SHEET**.	-	-
TDS Detail	THE CONSULTANTS [***INSERT "SHALL" OR "SHALL NOT"]*** BE HIRED UNDER THE CIRCUMSTANCES SET FORTH.	Manual Input	SHALL NOT BE
TDS Detail	[INSERT ANY OTHER CONFLICTING RELATIONSHIPS] _____	Manual Input	NOT APPLICABLE
ITT Reference	**4.UNFAIR COMPETITIVE ADVANTAGE** 4.1 FAIRNESS AND TRANSPARENCY IN THE SELECTION PROCESS REQUIRE THAT THE CONSULTANTS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THE ASSIGNMENT IN QUESTION. TO THAT END, THE PROCURING ENTITY SHALL INDICATE IN THE **DATA SHEET** AND MAKE AVAILABLE TO ALL CONSULTANTS TOGETHER WITH THIS RFP ALL INFORMATION THAT WOULD IN THAT RESPECT GIVE SUCH CONSULTANT ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING CONSULTANTS.	-	-

TDS Detail	*[IF "UNFAIR COMPETITIVE ADVANTAGE" APPLIES TO THE SELECTION, EXPLAIN HOW IT IS MITIGATED, INCLUDING LISTING THE REPORTS, INFORMATION, DOCUMENTS, ETC. AND INDICATING THE SOURCES WHERE THESE CAN BE DOWNLOADED OR OBTAINED BY THE CONSULTANTS]*	Manual Input	NOT APPLICABLE
ITT Reference	**6.ELIGIBILITY** 6.2 UNLESS OTHERWISE SPECIFIED IN THE DATA SHEET, THE PROCURING ENTITY PERMITS CONSULTANTS INCLUDING PROPOSED EXPERTS, JOINT VENTURES AND INDIVIDUAL MEMBERS FROM ALL COUNTRIES AND CATEGORIES TO OFFER CONSULTING SERVICES. THE MAXIMUM NUMBER OF MEMBERS OF JV TO BE ALLOWED SHALL BE SPECIFIED IN THE **DATA SHEET**.	-	-
TDS Detail	THE PROCURING ENTITY [SELECT ONE OPTION] PERMITS____ OR DOES NOT PERMIT_____ CONSULTANTS INCLUDING PROPOSED EXPERTS, JOINT VENTURES AND INDIVIDUAL MEMBERS FROM ALL COUNTRIES AND CATEGORIES TO OFFER CONSULTING SERVICES.	Manual Input	PERMITS
TDS Detail	MAXIMUM NUMBER OF MEMBERS ALLOWED IN THE JOINT VENTURE (JV) SHALL BE: ***[INSERT A NUMBER].***	Manual Input	2

ITT Reference	6.7 MARGIN OF PREFERENCE AND RESERVATIONS - NO MARGIN OF PREFERENCE SHALL BE ALLOWED IN THE SELECTION OF CONSULTANTS. RESERVATIONS MAY HOWEVER BE ALLOWED TO A SPECIFIC GROUP OF BUSINESSES (THESE GROUPS ARE SMALL AND MEDIUM ENTERPRISES, WOMEN ENTERPRISES, YOUTH ENTERPRISES AND ENTERPRISES OF PERSONS LIVING WITH DISABILITY, AS THE CASE MAY BE), AND WHO ARE APPROPRIATELY REGISTERED AS SUCH BY THE AUTHORITY TO BE SPECIFIED IN THE DATA SHEETS. A PROCURING ENTITY SHALL ENSURE THAT THE INVITATION TO SUBMIT PROPOSALS SPECIFICALLY INCLUDES ONLY BUSINESSES OR FIRMS BELONGING TO ONE GROUP.	-	-
TDS Detail	THE BUSINESS WILL BE REGISTERED WITH _____	Manual Input	REGISTRAR OF COMPANIES
ITT Reference	**10.DOCUMENTS COMPRISING THE PROPOSAL** 10.1 THE PROPOSAL SHALL COMPRISE THE DOCUMENTS AND FORMS LISTED IN THE **DATA SHEET**.	-	-

TDS Detail	THE PROPOSAL SHALL COMPRISE THE FOLLOWING: 1ST INNER ENVELOPE WITH THE TECHNICAL PROPOSAL: POWER OF ATTORNEY TO SIGN THE PROPOSAL TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE TECH-3: COMMENTS AND SUGGESTIONS TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES TECH-6: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUT TECH-7: MANDATORY DOCUMENTARY EVIDENCE AND 2ND INNER ENVELOPE WITH THE FINANCIAL PROPOSAL: (1) FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM (2) FIN-2: SUMMARY OF COSTS (3) FIN-3: BREAKDOWN OF REMUNERATION (4) FIN-4: BREAKDOWN OF REIMBURSABLE EXPENSES	Manual Input	YES

ITT Reference	**12.PROPOSAL VALIDITY** **PROPOSAL VALIDITY PERIOD** 12.1 THE **DATA SHEET** INDICATES THE PERIOD DURING WHICH THE CONSULTANT'S PROPOSAL MUST REMAIN VALID AFTER THE PROPOSAL SUBMISSION DEADLINE.	-	-
TDS Detail	PROPOSALS MUST REMAIN VALID FOR *[INSERT A NUMBER: NORMALLY BETWEEN 60 AND 120] DAYS AFTER THE PROPOSAL SUBMISSION DEADLINE.*	Manual Input	112

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ITT Reference	**13.CLARIFICATION AND AMENDMENT OF RFP** 13.1THE CONSULTANT MAY REQUEST A CLARIFICATION OF ANY PART OF THE RFP DURING THE PERIOD INDICATED IN THE **TDS** BEFORE THE PROPOSALS' SUBMISSION DEADLINE. ANY REQUEST FOR CLARIFICATION MUST BE SENT IN WRITING, OR BY STANDARD ELECTRONIC MEANS, TO THE PROCURING ENTITY'S ADDRESS INDICATED IN THE **DATA SHEET** UNDER ITC 18.5. THE PROCURING ENTITY WILL RESPOND IN WRITING, OR BY STANDARD ELECTRONIC MEANS, AND WILL SEND WRITTEN COPIES OF THE RESPONSE (INCLUDING AN EXPLANATION OF THE QUERY BUT WITHOUT IDENTIFYING ITS SOURCE) TO ALL CONSULTANTS. SHOULD THE PROCURING ENTITY DEEM IT NECESSARY TO AMEND THE RFP AS A RESULT OF A CLARIFICATION, IT SHALL DO SO FOLLOWING THE PROCEDURE DESCRIBED BELOW: IF SO SPECIFIED IN THE **DATA SHEET** THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEB PAGE IDENTIFIED IN THE **DATA SHEET** AND THE STATE TENDER PORTAL.	-	-
TDS Detail	CLARIFICATIONS MAY BE REQUESTED NO LATER THAN [***INSERT NUMBER***] DAYS PRIOR TO THE SUBMISSION DEADLINE.	Manual Input	7 DAYS

ITT Reference	**14.PREPARATION OF PROPOSALS–SPECIFIC CONSIDERATIONS** (B) THE PROCURING ENTITY MAY INDICATE IN THE **DATA SHEET** THE ESTIMATED AMOUNT OR KEY EXPERTS' TIME INPUT (EXPRESSED IN PERSON-MONTH), OR THE PROCURING ENTITY'S ESTIMATED TOTAL COST OF THE ASSIGNMENT, BUT NOT BOTH. THIS ESTIMATE IS INDICATIVE AND THE PROPOSAL SHALL BE BASED ON THE CONSULTANT'S OWN ESTIMATES FOR THE SAME. THIS CLAUSE SHALL NOT APPLY WHEN USING FIXED BUDGET SELECTION METHOD.	-	-
TDS Detail	(DO NOT USE FOR FIXED BUDGET METHOD) *[IF NOT USED, STATE "NOT APPLICABLE". IF USED, INSERT THE FOLLOWING:* ESTIMATED INPUT OF KEY EXPERTS' TIME-INPUT: _____PERSON-MONTHS. *[OR]* ESTIMATED TOTAL COST OF THE ASSIGNMENT: _____ *[INDICATE ONLY EITHER TIME INPUT (IN PERSON-MONTH) OR TOTAL COST, BUT NOT BOTH!]*	Manual Input	NOT APPLICABLE

ITT Reference	(C) FOR ASSIGNMENTS UNDER THE FIXED-BUDGET SELECTION METHOD, THE ESTIMATED KEY EXPERTS' TIME INPUT SHALL NOT BE DISCLOSED. TOTAL AVAILABLE BUDGET, WITH AN INDICATION WHETHER IT IS INCLUSIVE OR EXCLUSIVE OF TAXES, IS GIVEN IN THE **DATA SHEET,** AND THE FINANCIAL PROPOSAL SHALL NOT EXCEED THIS BUDGET.	-	-
TDS Detail	AND 26.2 [USE FOR FIXED BUDGET METHOD] *[IF FIXED BUDGET SELECTION METHOD IS NOT USED, STATE "NOT APPLICABLE". IF FIXED BUDGET SELECTION METHOD IS USED, INSERT THE FOLLOWING:* THE TOTAL AVAILABLE BUDGET FOR THIS FIXED-BUDGET ASSIGNMENT IS: _____ *[INSERT CURRENCY]* (*CHOOSE ONE*: INCLUSIVE OR EXCLUSIVE OF TAXES). PROPOSALS EXCEEDING THE TOTAL AVAILABLE BUDGET WILL BE REJECTED. *[IF INCLUSIVE, INDICATE TAX ESTIMATES SEPARATELY]*	Manual Input	NOT APPLICABLE
ITT Reference	D) KEY EXPERTS SHALL NOT APPEAR IN MORE THAN ONE PROPOSAL UNLESS SO ALLOWED IN THE **DATA SHEET.** INVITED FIRMS MUST CONFIRM AND ENSURE THEIR KEY EXPERTS DO NOT APPEAR IN PROPOSAL OF OTHER INVITED FIRMS, OTHERWISE PROPOSALS WITH KEY EXPERTS APPEARING IN OTHER PROPOSALS WILL BE REJECTED.	-	-

TDS Detail	KEY EXPERTS SHALL NOT APPEAR IN MORE THAN ONE PROPOSAL: YES..... /NO ..... *[SELECT ONE OPTION]*	Manual Input	YES
ITT Reference	**16.FINANCIAL PROPOSAL** 16.1 THE FINANCIAL PROPOSAL SHALL BE PREPARED USING THE STANDARD FORMS PROVIDED IN SECTION 4 OF THE RFP. IT SHALL LIST ALL COSTS ASSOCIATED WITH THE ASSIGNMENT, INCLUDING (A) REMUNERATION FOR KEY EXPERTS AND NON-KEY EXPERTS, (B) REIMBURSABLE EXPENSES INDICATED IN THE **DATA SHEET**. IRRESPECTIVE OF THE CONSULTANT SELECTION METHOD, ANY CONSULTANT THAT DOES NOT SUBMIT ITEMIZED AND PRICED FINANCIAL PROPOSAL, OR MERELY REFERS THE PROCURING ENTITY TO OTHER LEGAL INSTRUMENTS FOR THE APPLICABLE MINIMUM REMUNERATION FEES SHALL BE CONSIDERED NON-RESPONSIVE.	-	-
TDS Detail	*[A SAMPLE LIST OR REIMBURSABLE EXPENSES IS PROVIDED BELOW FOR GUIDANCE. ITEMS THAT ARE NOT APPLICABLE SHOULD BE DELETED; OTHERS MAY BE ADDED. IF THE PROCURING ENTITY WANTS TO SET UP MAXIMUM CEILINGS FOR UNIT RATES OF CERTAIN TYPE OF EXPENSES, SUCH CEILINGS SHOULD BE INDICATED IN THE FIN FORMS].* THE FINANCIAL PROPOSAL WILL INCLUDE (BUT NOT LIMITED TO) THE FOLLOWING REIMBURSABLE EXPENSES:	Manual Input	AS PER SCHEDULE OF REQUIREMENTS

	(1) *A PER DIEM ALLOWANCE, INCLUDING HOTEL, FOR EXPERTS FOR EVERY DAY OF ABSENCE FROM THE HOME OFFICE FOR THE PURPOSES OF THE SERVICES;* *(2) COST OF TRAVEL BY THE MOST APPROPRIATE MEANS OF TRANSPORT AND THE MOST DIRECT PRACTICABLE ROUTE;* *(3) COST OF OFFICE ACCOMMODATION, INCLUDING OVERHEADS AND BACK-STOP SUPPORT;* *(4) COMMUNICATIONS COSTS;* *(5) COST OF PURCHASE OR RENT OR FREIGHT OF ANY EQUIPMENT REQUIRED TO BE PROVIDED BY THE CONSULTANTS;* *(6) COST OF REPORTS PRODUCTION (INCLUDING PRINTING) AND DELIVERING TO THE PROCURING ENTITY;* *(7) OTHER ALLOWANCES WHERE APPLICABLE AND PROVISIONAL OR FIXED SUMS (IF ANY)]* *(8) [INSERT RELEVANT TYPE OF EXPENSES, IF/AS APPLICABLE]*		

ITT Reference	**A. PRICE ADJUSTMENT** 16.3 FOR ASSIGNMENTS WITH A DURATION EXCEEDING 18 MONTHS, A PRICE ADJUSTMENT PROVISION FOR FOREIGN AND/OR LOCAL INFLATION FOR REMUNERATION RATES APPLY IF SO, STATED IN THE **DATA SHEET.**	-	-
TDS Detail	A PRICE ADJUSTMENT PROVISION APPLIES TO REMUNERATION RATES: YES, _____ OR NO _____ *[THE PRICE ADJUSTMENT APPLIES TO TIME-BASED CONTRACTS WITH A DURATION EXCEEDING 18 MONTHS. IN EXCEPTIONAL CIRCUMSTANCES, PRICE ADJUSTMENT CAN ALSO APPLY TO LUMP-SUM CONTRACTS ASSIGNMENTS LONGER THAN 18 MONTHS IN DURATION WITH PRIOR AGREEMENT WITH THE PROCURING ENTITY]* *[IF "YES", SPECIFY WHETHER IT APPLIES TO FOREIGN AND/OR LOCAL INFLATION]*	Manual Input	NO
ITT Reference	**B. TAXES** 16.4 THE CONSULTANT AND ITS SUB-CONSULTANTS AND EXPERTS ARE RESPONSIBLE FOR MEETING ALL TAX LIABILITIES ARISING OUT OF THE CONTRACT UNLESS STATED OTHERWISE IN THE **DATA SHEET**. INFORMATION ON TAXES IN KENYA IS PROVIDED IN THE DATA SHEET.	-	-

TDS Detail	[IF THE PROCURING ENTITY HAS OBTAINED A TAX EXEMPTION APPLICABLE TO THE CONTRACT, INSERT: "THE PROCURING ENTITY HAS OBTAINED AN EXEMPTION FOR THE CONSULTANT FROM PAYMENT OF _____ [*INSERT THE TAX DESCRIPTION SUCH AS VAT, WITHHOLDING TAX, DUTIES, ETC.*] IN KENYA AS PER *[INSERT REFERENCE TO THE APPLICABLE OFFICIAL SOURCE THAT ISSUED AN EXEMPTION].* *[IF THERE IS NO TAX EXEMPTION IN KENYA, INSERT THE FOLLOWING:* "INFORMATION ON THE CONSULTANT'S TAX OBLIGATIONS IN THE PROCURING ENTITY'S COUNTRY CAN BE FOUND ON THE KENYA REVENUE AUTHORITY WEBSITE: WWW.KRA.GO.KE	Manual Input	AS PER APPLICABLE LAW
ITT Reference	**C. CURRENCY OF PROPOSAL** 16.5 THE CONSULTANT MAY EXPRESS THE PRICE FOR ITS SERVICES IN THE CURRENCY OR CURRENCIES AS STATED IN THE **DATA SHEET**. IF INDICATED IN THE DATA SHEET, THE PORTION OF THE PRICE REPRESENTING LOCAL COST SHALL BE STATED IN KENYA SHILLINGS.	-	-

TDS Detail	THE FINANCIAL PROPOSAL SHALL BE STATED IN THE FOLLOWING CURRENCIES: CONSULTANT MAY EXPRESS THE PRICE FOR THEIR SERVICES IN ANY FULLY CONVERTIBLE CURRENCY, SINGLY OR IN COMBINATION OF UP TO THREE FOREIGN CURRENCIES. THE FINANCIAL PROPOSAL SHOULD STATE LOCAL COSTS IN KENYA SHILLINGS: YES____ OR. NO_____.	Manual Input	KENYA SHILLINGS
ITT Reference	**18.SEALING AND MARKING OF PROPOSALS** 18.5 THE PROPOSAL OR ITS MODIFICATIONS MUST BE SENT TO THE ADDRESS INDICATED IN THE DATA SHEET AND RECEIVED BY THE PROCURING ENTITY NO LATER THAN THE DEADLINE INDICATED IN THE **DATA SHEET,** OR ANY EXTENSION TO THIS DEADLINE. ANY PROPOSAL OR ITS MODIFICATION RECEIVED BY THE PROCURING ENTITY AFTER THE DEADLINE SHALL BE DECLARED LATE AND REJECTED, AND PROMPTLY RETURNED UNOPENED. THE PROVISIONS OF CLAUSE 18 SHALL NOT APPLY TO TENDERS SUBMITTED ELECTRONICALLY	-	-

TDS Detail	THE PROPOSAL SUBMISSION ADDRESS IS: _____ THE PROPOSALS MUST BE SUBMITTED NO LATER THAN: DATE: ____DAY/MONTH/YEAR *[FOR EXAMPLE, 15 JANUARY 2018]* TIME: ____ *[INSERT TIME IN 24H FORMAT, FOR EXAMPLE, "16:00 EAST AFRICAN TIME"]*	Manual Input	WWW.EGPKENYA.GO.KE AS PER TENDER NOTICE
ITT Reference	**20.OPENING OF TECHNICAL PROPOSALS** 20.1 THE PROCURING ENTITY'S OPENING COMMITTEE SHALL CONDUCT THE OPENING OF THE TECHNICAL PROPOSALS IN THE PRESENCE OF THE CONSULTANTS' AUTHORIZED REPRESENTATIVES WHO CHOOSE TO ATTEND (IN PERSON, OR ONLINE IF THIS OPTION IS OFFERED IN THE DATA SHEET). THE OPENING DATE, TIME AND THE ADDRESS ARE STATED IN THE **DATA SHEET**. THE ENVELOPES WITH THE FINANCIAL PROPOSAL SHALL REMAIN SEALED AND SHALL BE SECURELY STORED BY THE PROCURING ENTITY OR WITH A REPUTABLE PUBLIC AUDITOR OR INDEPENDENT AUTHORITY UNTIL THEY ARE OPENED IN ACCORDANCE WITH ITC 22.	-	-

TDS Detail	AN ONLINE OPTION OF THE OPENING OF THE TECHNICAL PROPOSALS IS OFFERED: YES ___OR NO_____ *[IF YES, INSERT "THE ONLINE OPENING PROCEDURE SHALL BE: [DESCRIBE THE PROCEDURE FOR ONLINE OPENING OF TECHNICAL PROPOSALS.]* THE OPENING SHALL TAKE PLACE AT: *[INSERT AND FILL IN THE FOLLOWING:]* STREET ADDRESS: _____ FLOOR NUMBER ROOM NUMBER_____ CITY: _____ COUNTY: COUNTRY: _____ DATE: *[INDICATE…SAME AS THE SUBMISSION DEADLINE INDICATED IN 17.7.]* TIME: *[INSERT TIME IN 24H FORMAT, FOR EXAMPLE – "16:00 EAST AFRICAN TIME]* *[THE TIME SHOULD BE IMMEDIATELY AFTER THE TIME FOR THE SUBMISSION DEADLINE STATED IN 17.7, AS EXTENDED]*	Manual Input	NO AS PER ITC **ENERGY AND PETROLEUM REGULATORY AUTHORITY** **1ST FLOOR, EAGLE AFRICA CENTRE, LONGONOT ROAD UPPERHILL,** **P.O. BOX 42681 – 00100 NAIROBI, KENYA** **TEL: +254-20-2847000 /200; FAX: +254-20-2717603** **E-MAIL: PROCUREMENTGRP@EPRA.GO.KE; WEB SITE: HTTP://WWW.EPRA.GO.KE**

ITT Reference	20.2 AT THE OPENING OF THE TECHNICAL PROPOSALS THE FOLLOWING SHALL BE READ OUT: (I) THE NAME AND THE COUNTRY OF THE CONSULTANT OR, IN CASE OF A JOINT VENTURE, THE NAME OF THE JOINT VENTURE, THE NAME OF THE LEAD MEMBER AND THE NAMES AND THE COUNTRIES OF ALL MEMBERS; (II) THE PRESENCE OR ABSENCE OF A DULY SEALED ENVELOPE WITH THE FINANCIAL PROPOSAL; (III) ANY MODIFICATIONS TO THE PROPOSAL SUBMITTED PRIOR TO PROPOSAL SUBMISSION DEADLINE; AND (IV) ANY OTHER INFORMATION DEEMED APPROPRIATE OR AS INDICATED IN THE **DATA SHEET**.	-	-
TDS Detail	IN ADDITION, THE FOLLOWING INFORMATION WILL BE READ ALOUD AT THE OPENING OF THE TECHNICAL PROPOSALS _____ *[INSERT "NOT APPLICABLE" OR STATE WHAT ADDITIONAL INFORMATION WILL BE READ OUT AND RECORDED IN THE OPENING MINUTES]*	Manual Input	AS PER ITC
ITT Reference	**22.EVALUATION OF TECHNICAL PROPOSALS** 22.1THE PROCURING ENTITY'S EVALUATION COMMITTEE SHALL EVALUATE THE TECHNICAL PROPOSALS THAT HAVE PASSED THE ELIGIBILITY AND MANDATORY CRITERIA, ON THE BASIS OF THEIR RESPONSIVENESS TO THE TERMS OF REFERENCE AND THE RFP. THE ELIGIBILITY AND MANDATORY CRITERIA SHALL INCLUDE THE FOLLOWING AND ANY OTHER THAT MAY INCLUDE IN THE **DATA SHEET**	-	-

TDS Detail	OTHER ELIGIBILITY AND MANDATORY CRITERIA SHALL BE:	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	THE CRITERIA, SUB-CRITERIA, AND POINT SYSTEM FOR THE EVALUATION OF THE TECHNICAL PROPOSALS: ***[NOTE TO PROCURING ENTITY: ALLOCATION OF POINTS SHALL BE WITHIN THE RANGE PROVIDED FOR EACH CRITERION AND SUB-CRITERIA]*** [NOTES TO CONSULTANT: THE PROCURING ENTITY WILL ASSESS WHETHER THE PROPOSED METHODOLOGY IS CLEAR, RESPONDS TO THE TORS, WORK PLAN IS REALISTIC AND IMPLEMENTABLE; OVERALL TEAM COMPOSITION IS BALANCED AND HAS AN APPROPRIATE SKILL MIX; AND THE WORK PLAN HAS RIGHT INPUT OF EXPERTS] POINTS	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(I) SPECIFIC EXPERIENCE OF THE CONSULTANT, AS A FIRM, RELEVANT TO THE ASSIGNMENT: [0 - 10]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(II) ADEQUACY AND QUALITY OF THE PROPOSED METHODOLOGY, AND WORK PLAN IN RESPONDING TO THE TERMS OF REFERENCE (TORS):	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	TECHNICAL APPROACH AND METHODOLOGY [INSERT POINTS]	Manual Input	AS PER SET EVALUATION CRITERIA

TDS Detail	WORK PLAN [INSERT POINTS]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	ORGANIZATION AND STAFFING [INSERT POINTS]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	TOTAL POINTS FOR CRITERION (II): [20 - 50]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(III) KEY EXPERTS' QUALIFICATIONS AND COMPETENCE FOR THE ASSIGNMENT: {NOTES TO CONSULTANT: EACH POSITION NUMBER CORRESPONDS TO THE SAME FOR THE KEY EXPERTS IN FORM TECH-6 TO BE PREPARED BY THE CONSULTANT}	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(A) POSITION K-1: [TEAM LEADER] [INSERT POINTS]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(B) POSITION K-2: [INSERT POSITION TITLE] [INSERT POINTS]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(C) POSITION K-3: [INSERT POSITION TITLE] [INSERT POINTS] ETC.	Manual Input	AS PER SET EVALUATION CRITERIA

TDS Detail	TOTAL POINTS FOR CRITERION (III): [30 - 60]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	THE NUMBER OF POINTS TO BE ASSIGNED TO EACH OF THE ABOVE KEY EXPERTS POSITIONS SHALL BE DETERMINED CONSIDERING THE FOLLOWING THREE SUB-CRITERIA AND RELEVANT PERCENTAGE WEIGHTS: (1) GENERAL QUALIFICATIONS (GENERAL EDUCATION, TRAINING, AND EXPERIENCE): [INSERT WEIGHT BETWEEN 10 AND 30 %]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(2) ADEQUACY FOR THE ASSIGNMENT (RELEVANT EDUCATION, TRAINING, EXPERIENCE IN THE SECTOR OR SIMILAR ASSIGNMENTS): ***[INSERT WEIGHT BETWEEN 60 AND 70%]***	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(3) RELEVANT EXPERIENCE IN THE KENYA (WORKING LEVEL FLUENCY IN LOCAL LANGUAGE(S)/KNOWLEDGE OF LOCAL CULTURE OR ADMINISTRATIVE SYSTEM, GOVERNMENT ORGANIZATION, ETC.): **[INSERT WEIGHT BETWEEN 0 AND 10 %]** **TOTAL WEIGHT: 100%**	Manual Input	AS PER SET EVALUATION CRITERIA

TDS Detail	IV) TRANSFER OF KNOWLEDGE AND TRAINING PROGRAM (RELEVANCE OF APPROACH AND METHODOLOGY): ***[NORMALLY NOT TO EXCEED 10 POINTS.***	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	WHEN TRANSFER OF KNOWLEDGE IS A PARTICULARLY IMPORTANT COMPONENT OF THE ASSIGNMENT, MORE THAN 10 POINTS MAY BE ALLOCATED; THE FOLLOWING SUB-CRITERIA MAY BE PROVIDED]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(A) RELEVANCE OF TRAINING PROGRAM [INSERT POINTS]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(B) TRAINING APPROACH AND METHODOLOGY [INSERT POINTS]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	(C)QUALIFICATIONS OF EXPERTS AND TRAINERS [INSERT POINTS] TOTAL POINTS FOR CRITERION (IV): [0 – 10]	Manual Input	AS PER SET EVALUATION CRITERIA

TDS Detail	(V) PARTICIPATION BY KENYA CITIZENS AMONG PROPOSED KEY EXPERTS [0 – 10] [NOT TO EXCEED 10 POINTS] [SUB-CRITERIA SHALL NOT BE PROVIDED. CALCULATED AS A RATIO OF THE KENYAN KEY EXPERTS' TIME-INPUT (IN PERSON-MONTHS) TO THE TOTAL NUMBER OF KEY EXPERTS' TIME-INPUT (IN PERSON-MONTHS) IN THE CONSULTANT'S TECHNICAL PROPOSAL]	Manual Input	AS PER SET EVALUATION CRITERIA
TDS Detail	TOTAL POINTS FOR THE FIVE CRITERIA: 100 THE MINIMUM TECHNICAL SCORE (ST) REQUIRED TO PASS IS: _____ [INSERT NUMBER] [NOTES TO PROCURING ENTITY: THE INDICATIVE RANGE FOR THE MINIMUM TECHNICAL SCORE REQUIRED TO PASS IS 70 TO 85 ON A SCALE OF 1 TO 100]	Manual Input	AS PER SET EVALUATION CRITERIA
ITT Reference	22.2 EACH RESPONSIVE PROPOSAL WILL BE GIVEN A TECHNICAL SCORE. A PROPOSAL SHALL BE REJECTED AT THIS STAGE IF IT DOES NOT RESPOND TO IMPORTANT ASPECTS OF THE RFP OR IF IT FAILS TO ACHIEVE THE MINIMUM TECHNICAL SCORE INDICATED IN THE **TDS**	-	-
TDS Detail		Manual Input	

	THE CRITERIA, SUB-CRITERIA, AND POINT SYSTEM FOR THE EVALUATION OF THE TECHNICAL PROPOSALS: *[NOTE TO PROCURING ENTITY: ALLOCATION OF POINTS SHALL BE WITHIN THE RANGE PROVIDED FOR EACH CRITERION AND SUB-CRITERIA]* POINTS (I) SPECIFIC EXPERIENCE OF THE CONSULTANT, AS A FIRM, RELEVANT TO THE ASSIGNMENT: *[0 - 10]* (II) ADEQUACY AND QUALITY OF THE PROPOSED METHODOLOGY, AND WORK PLAN IN RESPONDING TO THE TERMS OF REFERENCE (TORS): (A) TECHNICAL APPROACH AND METHODOLOGY [*INSERT POINTS]* (B) WORK PLAN [*INSERT POINTS]* (C) ORGANIZATION AND STAFFING *[INSERT POINTS]* **TOTAL POINTS FOR CRITERION (II): *[20 - 50]***		AS PER SET EVALUATION CRITERIA

[NOTES TO CONSULTANT: THE PROCURING ENTITY WILL ASSESS WHETHER THE PROPOSED METHODOLOGY IS CLEAR, RESPONDS TO THE TORS, WORK PLAN IS REALISTIC AND IMPLEMENTABLE; OVERALL TEAM COMPOSITION IS BALANCED AND HAS AN APPROPRIATE SKILL MIX; AND THE WORK PLAN HAS RIGHT INPUT OF EXPERTS]

(III) KEY EXPERTS' QUALIFICATIONS AND COMPETENCE FOR THE ASSIGNMENT:

{NOTES TO CONSULTANT: EACH POSITION NUMBER CORRESPONDS TO THE SAME FOR THE KEY EXPERTS IN FORM TECH-6 TO BE PREPARED BY THE CONSULTANT}

(A) POSITION K-1: [TEAM LEADER] [INSERT POINTS]

(B) POSITION K-2: [INSERT POSITION TITLE] [INSERT POINTS]

(C) POSITION K-3: [INSERT POSITION TITLE] [INSERT POINTS]

ETC.

TOTAL POINTS FOR CRITERION (III):
[30 - 60]

THE NUMBER OF POINTS TO BE ASSIGNED TO EACH OF THE ABOVE KEY EXPERTS POSITIONS SHALL BE DETERMINED CONSIDERING THE FOLLOWING THREE SUB-CRITERIA AND RELEVANT PERCENTAGE WEIGHTS:

(1)GENERAL QUALIFICATIONS (GENERAL EDUCATION, TRAINING, AND EXPERIENCE): *[INSERT WEIGHT BETWEEN 10 AND 30 %]*

(2) ADEQUACY FOR THE ASSIGNMENT (RELEVANT EDUCATION, TRAINING, EXPERIENCE IN THE SECTOR OR SIMILAR ASSIGNMENTS)*: [INSERT WEIGHT BETWEEN 60 AND 70%]*

(3) RELEVANT EXPERIENCE IN THE KENYA (WORKING LEVEL FLUENCY IN LOCAL LANGUAGE(S)/KNOWLEDGE OF LOCAL CULTURE OR ADMINISTRATIVE SYSTEM, GOVERNMENT ORGANIZATION, ETC.): *[INSERT WEIGHT BETWEEN 0 AND 10 %]*

TOTAL WEIGHT: 100%

(IV) TRANSFER OF KNOWLEDGE AND TRAINING PROGRAM (RELEVANCE OF APPROACH AND METHODOLOGY):

[NORMALLY NOT TO EXCEED 10 POINTS.

WHEN TRANSFER OF KNOWLEDGE IS A PARTICULARLY IMPORTANT COMPONENT OF THE ASSIGNMENT, MORE THAN 10 POINTS MAY BE ALLOCATED; THE FOLLOWING SUB-CRITERIA MAY BE PROVIDED]

(A) RELEVANCE OF TRAINING PROGRAM [INSERT POINTS]

(B) TRAINING APPROACH AND METHODOLOGY [INSERT POINTS]

(C)QUALIFICATIONS OF EXPERTS AND TRAINERS [INSERT POINTS]

TOTAL POINTS FOR CRITERION (IV): ***[0 – 10]***

(V) PARTICIPATION BY KENYA CITIZENS AMONG PROPOSED KEY EXPERTS *[0 – 10]*

[NOT TO EXCEED 10 POINTS] [SUB-CRITERIA SHALL NOT BE PROVIDED. CALCULATED AS A RATIO OF THE KENYAN KEY EXPERTS' TIME-INPUT (IN PERSON-MONTHS) TO THE TOTAL NUMBER OF KEY EXPERTS' TIME-INPUT (IN PERSON-MONTHS) IN THE CONSULTANT'S TECHNICAL PROPOSAL]

TOTAL POINTS FOR THE FIVE CRITERIA *:* **100**

THE MINIMUM TECHNICAL SCORE (ST) REQUIRED TO PASS IS*:* _____ *[INSERT NUMBER]*

[NOTES TO PROCURING ENTITY: THE INDICATIVE RANGE FOR THE MINIMUM TECHNICAL SCORE REQUIRED TO PASS IS 70 TO 85 ON A SCALE OF 1 TO 100]

ITT Reference	**23.PUBLIC OPENING OF FINANCIAL PROPOSALS** 23.4 OPENING OF FINANCIAL PROPOSALS THE OPENING DATE SHOULD ALLOW THE CONSULTANTS SUFFICIENT TIME TO DECIDE FOR ATTENDING THE OPENING AND SHALL BE NO LESS THAN FIVE (5) BUSINESS DAYS FROM THE DATE OF NOTIFICATION OF THE RESULT S OF THE TECHNICAL EVALUATION, DESCRIBED IN **ITC 22.1 AND 22.2.** THE FINANCIAL PROPOSALS SHALL BE OPENED PUBLICLY BY THE PROCURING ENTITY'S OPENING COMMITTEE IN THE PRESENCE OF THE REPRESENTATIVES OF THE CONSULTANTS AND ANYONE ELSE WHO CHOOSES TO ATTEND. AT THE OPENING, THE NAMES OF THE CONSULTANTS, AND THE OVERALL TECHNICAL SCORES, INCLUDING THE BREAK-DOWN BY CRITERION, SHALL BE READ ALOUD. THE FINANCIAL PROPOSALS WILL THEN BE INSPECTED TO CONFIRM THAT THEY HAVE REMAINED SEALED AND UNOPENED. THESE FINANCIAL PROPOSALS SHALL BE THEN OPENED, AND THE TOTAL PRICES READ ALOUD AND RECORDED. COPIES OF THE RECORD SHALL BE SENT TO ALL CONSULTANTS WHO SUBMITTED PROPOSALS.	-	-
TDS Detail	AN ONLINE OPTION OF THE OPENING OF THE FINANCIAL PROPOSALS IS OFFERED: YES ____OR NO_____.	Manual Input	NO

TDS Detail	[IF YES, INSERT "THE ONLINE OPENING PROCEDURE SHALL BE: [DESCRIBE THE PROCEDURE FOR ONLINE OPENING OF FINANCIAL PROPOSALS.]	Manual Input	NOT APPLICABLE
ITT Reference	**25.TAXES** 25.2 ALL LOCAL IDENTIFIABLE TAXES LEVIED ON THE CONTRACT IN VOICES (SUCH AS SALES TAX, VAT, EXCISE TAX, OR ANY SIMILAR TAXES OR LEVIES) AND IN COME AND WITHHOLDING TAX PAYABLE TO KENYA ON THE REMUNERATION OF NON-RESIDENT EXPERTS FOR THE SERVICES RENDERED IN KENYA ARE DEALT WITH IN ACCORDANCE WITH THE INSTRUCTIONS IN THE **DATA SHEET.**	-	-
TDS Detail	FOR THE EVALUATION, THE PROCURING ENTITY WILL INCLUDE SEPARATE ITEMS OF: (A) ALL LOCAL IDENTIFIABLE INDIRECT TAXES SUCH AS SALES TAX, EXCISE TAX, VAT, OR SIMILAR TAXES LEVIED ON THE CONTRACT'S INVOICES; AND (B) ALL ADDITIONAL LOCAL INDIRECT TAX ON THE REMUNERATION OF SERVICES RENDERED BY EXPERTS. IF A CONTRACT IS AWARDED, AT CONTRACT NEGOTIATIONS, ALL SUCH TAXES WILL BE DISCUSSED, FINALIZED USING THE ITEMIZED LIST AND INCLUDED IN THE CONTRACT AMOUNT AS A SEPARATE LINE, ALSO INDICATING WHICH TAXES SHALL BE PAID BY THE CONSULTANT AND WHICH TAXES ARE WITHHELD AND PAID BY THE PROCURING ENTITY ON BEHALF OF THE CONSULTANT.	Manual Input	YES

ITT Reference	**26.CONVERSION TO SINGLE CURRENCY** 26.1 FOR THE EVALUATION PURPOSES, PRICES SHALL BE CONVERTED TO A SINGLE CURRENCY USING THE SELLING RATES OF EXCHANGE, SOURCE AND DATE INDICATED IN THE **DATA SHEET**.	-	-
TDS Detail	THE SINGLE CURRENCY FOR THE CONVERSION OF ALL PRICES EXPRESSED IN VARIOUS CURRENCIES INTO A SINGLE ONE IS: ***[INDICATE KENYA SHILLINGS OR ANOTHER FULLY CONVERTIBLE FOREIGN CURRENCY]***	Manual Input	NOT APPLICABLE
TDS Detail	THE OFFICIAL SOURCE OF THE SELLING EXCHANGE RATE IS:	Manual Input	NOT APPLICABLE
TDS Detail	THE DATE OF THE EXCHANGE RATE IS: ***[THE DATE MAY BE THE SAME AS THE THAT FOR DEADLINE FOR SUBMISSION OF PROPOSALS, OR A DATE THAT IS FIVE BUSINESS DAYS PRIOR TO THE SUBMISSION DEADLINE]***	Manual Input	NOT APPLICABLE

ITT Reference	**29.COMBINED QUALITY AND COST EVALUATION** **A. QUALITY AND COST BASED SELECTION (QCBS) METHOD** 29.1 IN THE CASE OF QUALITY AND COST BASED SELECTION (QCBS), THE TOTAL SCORE IS CALCULATED BY WEIGHTING THE TECHNICAL AND FINANCIAL SCORES AND ADDING THEM AS PER THE FORMULA AND INSTRUCTIONS IN THE DATA SHEET. THE CONSULTANT THAT ACHIEVES THE HIGHEST COMBINED TECHNICAL AND FINANCIAL SCORE WILL BE NOTIFIED AND INVITED FOR NEGOTIATIONS.	-	-
TDS Detail	THE LOWEST EVALUATED FINANCIAL PROPOSAL (FM) IS GIVEN THE MAXIMUM FINANCIAL SCORE (SF) OF 100. THE FORMULA FOR DETERMINING THE FINANCIAL SCORES (SF) OF ALL OTHER PROPOSALS IS CALCULATED AS FOLLOWING: SF EQUAL TO 100 X FM/ F, IN WHICH “SF” IS THE FINANCIAL SCORE, “FM” IS THE LOWEST PRICE, AND “F” THE PRICE OF THE PROPOSAL UNDER CONSIDERATION.	Manual Input	YES

TDS Detail	THE WEIGHTS GIVEN TO THE TECHNICAL (T) AND FINANCIAL (P) PROPOSALS ARE: T IS [***INSERT WEIGHT BETWEEN 0.70 AND 0.85],*** AND	Manual Input	0.80
TDS Detail	***P IS _____[INSERT WEIGHT BETWEEN 0.15 AND 0.30]***	Manual Input	0.20
TDS Detail	PROPOSALS ARE RANKED ACCORDING TO THEIR COMBINED TECHNICAL (ST) AND FINANCIAL (SF) SCORES USING THE WEIGHTS (T EQUALS TO THE WEIGHT GIVEN TO THE TECHNICAL PROPOSAL; P EQUALS TO THE WEIGHT GIVEN TO THE FINANCIAL PROPOSAL; T + P IS 1) AS FOLLOWING: S EQUALS TO ST X T% + SF X P%.	Manual Input	YES

ITT Reference	**31.STANDSTILL PERIOD** 31.1 THE STANDSTILL PERIOD SHALL BE THE NUMBER OF DAYS STATED IN THE DATA SHEET. THE STANDSTILL PERIOD COMMENCES THE DAY AFTER THE DATE THE PROCURING ENTITY HAS TRANSMITTED TO EACH CONSULTANT (THAT HAS NOT ALREADY BEEN NOTIFIED THAT IT HAS BEEN UNSUCCESSFUL) THE NOTIFICATION OF INTENTION TO AWARD THE CONTRACT. THE CONTRACT SHALL NOT BE SIGNED EARLIER THAN THE EXPIRY OF THE STANDSTILL PERIOD. THIS PERIOD SHALL BE ALLOWED FOR AGGRIEVED CONSULTANTS TO LODGE AN APPEAL. THE PROCEDURE FOR APPEAL AND THE AUTHORITY TO DETERMINE THE APPEAL OR COMPLAINT IS AS INDICATED IN THE **DATA SHEET**.	-	-
TDS Detail	THE STANDSTILL PERIOD SHALL BE: ___ DAYS *[INSERT THE MINIMUM NUMBER OF DAYS LEGALLY ALLOWED FOR APPEALS TO ADMINISTRATIVE REVIEW BOARD]* THE PROCEDURES FOR MAKING A PROCUREMENT RELATED COMPLAINT ARE DETAILED IN THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT AND REGULATIONS. IF A CONSULTANT WISHES TO MAKE A PROCUREMENT RELATED COMPLAINT OR APPEAL, THE CONSULTANT SHALL SUBMIT ITS COMPLAINT TO THE PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD.	Manual Input	14

ITT Reference	**32.NEGOTIATIONS** 32.1 THE NEGOTIATIONS WILL BE HELD AT THE DATE AND ADDRESS INDICATED IN THE **DATA SHEET** WITH THE CONSULTANT'S REPRESENTATIVE(S) WHO MUST HAVE WRITTEN POWER OF ATTORNEY TO NEGOTIATE AND SIGN A CONTRACT ON BEHALF OF THE CONSULTANT	-	-
TDS Detail	EXPECTED DATE AND ADDRESS FOR CONTRACT NEGOTIATIONS: DATE: _____ DAY/MONTH/YEAR [FOR EXAMPLE, 15 JANUARY 2018]	Manual Input	TO BE ADVISED
TDS Detail	ADDRESS: _____	Manual Input	TO BE ADVISED
ITT Reference	**35.SIGNING OF CONTRACT** 35.2 THE CONSULTANT IS EXPECTED TO COMMENCE THE ASSIGNMENT ON THE DATE AND AT THE LOCATION SPECIFIED IN THE DATA SHEET.	-	-
TDS Detail	EXPECTED DATE FOR COMMENCEMENT OF SERVICES: DATE: _____ *[INSERT DATE, MONTH AND YEAR]* AT: ____ *[INSERT LOCATION]*	Manual Input	TO BE ADVISED

ITT Reference	**36.PUBLICATION OF PROCUREMENT CONTRACT** 36.1 WITHIN THE PERIOD SPECIFIED IN THE DATA SHEET, THE PROCURING ENTITY SHALL PUBLISH THE AWARDED CONTRACT ON THE STATE TENDER PORTAL, ENTITY WEBSITE AND ITS NOTICEBOARD WHICH SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION: (A) NAME AND ADDRESS OF THE PROCURING ENTITY; (B) NAME AND REFERENCE NUMBER OF THE CONTRACT BEING AWARDED, (C) THE SELECTION METHOD USED; (D) NAMES OF THE CONSULTANTS THAT SUBMITTED PROPOSALS; (E) NAMES OF ALL CONSULTANTS WHOSE PROPOSALS WERE REJECTED OR WERE NOT EVALUATED; (F) THE NAME OF THE SUCCESSFUL CONSULTANT, THE FINAL TOTAL CONTRACT PRICE, THE CONTRACT DURATION AND A SUMMARY OF ITS SCOPE.	-	-
TDS Detail	THE PUBLICATION OF THE CONTRACT AWARD INFORMATION FOLLOWING THE COMPLETION OF THE CONTRACT NEGOTIATIONS AND CONTRACT SIGNING WILL BE DONE AS FOLLOWING: THE PUBLICATION WILL BE DONE WITHIN _____ DAYS AFTER THE CONTRACT SIGNING *[INSERT THE LEGALLY RECOGNISED DAYS FOR PUBLISHING THE CONTRACT AND AWARD NOTICE]*	Manual Input	30

MANDATORY EVALUATION REQUIREMENTS

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Mandatory Evaluation Requirement

Evaluation Requirement	Is Document Required from Supplier ?
Self - Declaration Form - 2	Yes
COPY OF CERTIFICATE OF REGISTRATION /INCORPORATION.	Yes
A COPY OF CURRENT/VALID TAX COMPLIANCE CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY.	Yes
COPY OF CR-12 FROM THE REGISTRAR OF COMPANIES (FOR LIMITED COMPANIES) NOT OLDER THAN SIX (6) MONTHS. FOR SOLE PROPRIETORSHIPS AND PARTNERSHIP, ATTACH IDENTIFICATION CARDS (IDS) OF THE OWNERS/PARTNERS	Yes
DULY DATED AND STAMPED POWER OF ATTORNEY SIGNED BY A LEGALLY AUTHORIZED REPRESENTATIVE OF THE TENDERER AUTHORIZING THE PERSON TO SIGN ON BEHALF OF THE TENDERER.	Yes
TENDER SECURITY AMOUNTING TO KENYA SHILLINGS FIVE HUNDRED THOUSAND ONLY KSHS.500,000.00	Yes
DULY FILLED CONFIDENTIAL BUSINESS QUESTIONNAIRE	Yes

SECTION 3: TECHNICAL PROPOSAL & FINANCIAL PROPOSAL–STANDARD FORMS

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A - CONSULTANT'S ORGANIZATION : FORM TECH2 CONSULTANTS ORGANIZATION AND EXPERIENCE

Technical Evaluation Process : No

Table Header : PROVIDE HERE A BRIEF DESCRIPTION OF THE BACKGROUND AND ORGANIZATION OF YOUR COMPANY, AND-IN CASE OF A JOINT VENTURE-OF EACH MEMBER FOR THIS ASSIGNMENT.

ORGANIZATION NAME	BACKGROUND

Table Footer : -

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B - CONSULTANT'S EXPERIENCE : FORM TECH2 CONSULTANTS ORGANIZATION AND EXPERIENCE

Technical Evaluation Process : No

Table Header : -

ASSIGNMENT NAME:	COUNTRY	NAME OF THE PROCURING ENTITY	CONTACT ADDRESS	EMAIL	START DATE	COMPLETION DATE	ROLE ON ASSIGNMENT

Table Footer : 2. LIST ONLY THOSE ASSIGNMENTS FOR WHICH THE CONSULTANT WAS LEGALLY CONTRACTED BY THE PROCURING ENTITY AS A COMPANY OR WAS ONE OF THE JOINT VENTURE PARTNERS. ASSIGNMENTS COMPLETED BY THE CONSULTANT'S INDIVIDUAL EXPERTS WORKING PRIVATELY OR THROUGH OTHER CONSULTING FIRMS CANNOT BE CLAIMED AS THE RELEVANT EXPERIENCE OF THE CONSULTANT, OR THAT OF THE CONSULTANT'S PARTNERS OR SUB-CONSULTANTS, BUT CAN BE CLAIMED BY THE EXPERTS THEMSELVES IN THEIR CURRICULUM VITAE (CV). 3. THE CONSULTANT SHALL SUBSTANTIATE THEIR CLAIMED EXPERIENCE BY PRESENTING COPIES OF RELEVANT DOCUMENTS SUCH AS THE FORM OF CONTRACT (NOT THE WHOLE CONTRACT), PURCHASE ORDER, SERVICE ORDER, PERFORMANCE CERTIFICATE, ETC.; WHICH SHALL BE INCLUDED IN THE PROPOSAL AS PART OF FORM TECH 7 MANDATORY DOCUMENTARY EVIDENCE.

ADDITIONAL DETAILS ON PERFORMED ASSIGNMENTS : FORM TECH2 CONSULTANTS ORGANIZATION AND EXPERIENCE

Technical Evaluation Process : No

Table Header : FOR EACH OF THE ASSIGNMENTS ABOVE, PROVIDE THE ADDITIONAL DETAILS REQUESTED IN THE TABLE BELOW: CONSULTANT'S EXPERIENCE -DETAILS OF EXPERIENCE

ASSIGNMENT NO	APPROX. VALUE OF THE CONTRACT [KES, US$ ETC.]:	DURATION OF ASSIGNMENT	TOTAL NO OF STAFF-MONTHS OF THE ASSIGNMENT	APPROX. VALUE OF THE SERVICES PROVIDED BY YOUR FIRM UNDER THE CONTRACT	NO OF PROFESSIONAL STAFF-MONTHS PROVIDED BY ASSOCIATED CONSULTANTS NAME OF SENIOR PROFESSIONAL STAFF OF YOUR FIRM INVOLVED AND FUNCTIONS PERFORMED	NAME OF SENIOR PROFESSIONAL STAFF OF YOUR FIRM INVOLVED AND FUNCTIONS PERFORMED	NARRATIVE DESCRIPTION OF ASSIGNMENT	DESCRIPTION OF ACTUAL SERVICES PROVIDED BY YOUR STAFF WITHIN THE ASSIGNMENT: E.G. ASSIGNMENT NO. 1 (MONTHS):

Table Footer : -

SIGN OFF : FORM TECH2 CONSULTANTS ORGANIZATION AND EXPERIENCE

Technical Evaluation Process : No

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION	DATE
WE CONFIRM THAT THE INFORMATION GIVEN ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DI SQUALIFICATION				

Table Footer : FOR A JOINT VENTURE, EITHER ALL MEMBERS SHALL SIGN OR ONLY THE LEAD MEMBER, IN WHICH CASE THE POWER OF ATTORNEY TO SIGN ON BEHALF OF ALL MEMBERS SHALL BE ATTACHED}

A - IMPROVEMENT ON THE TERMS OF REFERENCE : FORM TECH-3- COMMENT AND SUGGESTIONS

Technical Evaluation Process : No

Table Header : {IMPROVEMENTS TO THE TERMS OF REFERENCE, IF ANY}	
STATEMENT	**TENDERER'S RESPONSE**
Table Footer : INCLUDE COMMENTS ON COUNTERPART STAFF AND FACILITIES TO BE PROVIDED BY THE PROCURING ENTITY. FOR EXAMPLE, ADMINISTRATIVE SUPPORT, OFFICE SPACE, LOCAL TRANSPORTATION, EQUIPMENT, DATA, BACKGROUND REPORTS, ETC., IF ANY	

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B - IMPROVEMENT ON COUNTERPART STAFF AND FACILITIES : FORM TECH-3-COMMENT AND SUGGESTIONS

Technical Evaluation Process : No

Table Header : -	
STATEMENT	**TENDERER'S RESPONSE**
PROPOSED IMPROVEMENT ON COUNTERPART STAFF AND FACILITIES	
Table Footer : -	

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TENDERER'S DETAILS : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -			
TENDERER'S NAME;	**TENDERER'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION**	**TENDERER'S YEAR OF REGISTRATION**	**TENDERER'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION**
Table Footer : -			

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JV DETAILS : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

JV'S NAME	JV'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION	JV'S YEAR OF REGISTRATION	JV'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION

Table Footer : -

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TENDERER'S/JV MEMBER'S AUTHORIZATED REPRESENTATIVE INFORMATION : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -			
NAME	**ADDRESS**	**TELEPHONE NUMBERS**	**EMAIL ADDRESS**
Table Footer : -			

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ATTACHED COPIES OF ORIGINAL DOCUMENTS : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

TENDERER DECLARATION	Supplier response
a) For Kenyan Tenderers a current tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.13.	
b) Articles of Incorporation (or equivalent documents of constitution or association), and /or documents of registration of the legal entity named above, in accordance with ITT 3.6.	
c) In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1.	
d) In case of state-owned enterprise or institution, in accordance with ITT 3.1 documents establishing:(i) Legal and financial autonomy,(ii) Operation under commercial law, (iii) Establishing that the tenderer is not under the supervision of the Procuring Entity	
e) Included are the organizational chart and a list of Board of Directors	

Table Footer : -

A. SOLE PROPRIETOR : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

NAME IN FULL	AGE	NATIONALITY	COUNTRY OF ORIGIN	CITIZENSHIP

Table Footer : -

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B. PARTNERSHIP PROVIDE THE FOLLOWING DETAILS : FORM CON – 1 TENDERER' S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header :

NAMES OF PARTNERS	NATIONALITY	CITIZENSHIP	PERCENTAGE SHARES OWNED

Table Footer : -

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C. REGISTERED COMPANY, PROVIDE THE FOLLOWING DETAILS : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

PRIVATE OR PUBLIC	NOMINAL CAPITAL KENYA SHILLINGS (EQUIVALENT)	ISSUED CAPITAL KENYA SHILLINGS (EQUIVALENT)

Table Footer : -

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DIRECTOR'S DETAILS : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : GIVE DETAILS OF DIRECTORS AS FOLLOWS.

NAMES OF DIRECTOR	NATIONALITY	CITIZENSHIP	PERCENTAGE SHARES OWNED

Table Footer : -

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DISCLOSURE OF INTEREST-INTEREST OF THE FIRM IN THE PROCURING ENTITY : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -	
STATEMENT	**TENDERER'S RESPONSE**
IS THERE ANY PERSON(S) IN PROCURING ENTITY WHO HAS ANY INTEREST OR RELATIONSHIP IN THIS FIRM	
Table Footer : -	

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RELATIONS WITH TENDERER IN THE PROCURING ENTITY : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -		
NAME OF PERSON	DESIGNATION IN THE PROCURING ENTITY	INTEREST OR RELATIONSHIP WITH TENDERER
Table Footer : -		

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CONFLICT OF INTEREST DISCLOSURE : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

TENDERER DECLARATION	TENDERER'S RESPONSE	IF YES PROVIDE DETAILS OF THE RELATIONSHIP WITH TENDERER
Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
Tenderer has the same legal representative as another tenderer		
Tenderer has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tender.		

Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
Tenderer has a close business or family relationship with a staff of the Procuring Entity.		
HAS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP STATED IN ITEM 6 ABOVE BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT		
The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders and the Tenderer discloses, complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements.		

Table Footer : -

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CONFIRMATION AND CERTIFICATION : FORM CON – 1 TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : CONFIRM THAT THE TERMS OF THE TENDER HAVE NOT BEEN, AND WILL NOT BE, KNOWINGLY DISCLOSED BY THE TENDERER, DIRECTLY OR INDIRECTLY TO ANY COMPETITOR, PRIOR TO THE DATE AND TIME OF THE OFFICIAL TENDER OPENING, OR OF THE AWARDING OF THE CONTRACT, WHICHEVER COMES FIRST, UNLESS OTHERWISE REQUIRED BY LAW OR AS SPECIFICALLY DISCLOSED ABOVE.

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION	DATE
WE CONFIRM THAT INFORMATION PROVIDED ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DI SQUALIFICATION OF OUR TENDER				

Table Footer : -

TECHNICAL EVALUATION CRITERIA : TECHNICAL EVALUATION CRITERIA

Technical Evaluation Process : Yes

Table Header : -

Criteria	MAXIMUM SCORE	BIDDER RESPONSE
A. Specific experience of the Consultant (as a firm) relevant to the Assignment: Attach reference letters/ LPOs/ LSOs/ contracts/ certificates of completion 1. At least 15 years of experience in similar power system studies, five (5) of these years must be in a developing country environment (5 mks) 2. Successfully undertaken at least three (3) similar studies in the last ten (10) years(3 mks) 3. Working in a Sub-Saharan Africa context will be an added advantage(2 mks)	10	

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B. Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs): 1. The methodology is relevant: it brings added value to the TORs and contains innovations(4 mks) 2. The work plan is detailed, realistic and in line with the TORs and proposed methodology, milestones and timelines(4 mks) 3. The allotment between international experts and local experts, or between experts on site and at headquarters, achieves the expected results(4 mks) 4. The number of experts and the expected number of working days for each expert are adequate to satisfactorily perform each activity.(4 mks) 5. Provision of adequate and suitable tools for:(4 mks) a) Power system steady state and dynamic studies b) Power System Protection Studies c) Generation and Transmission Planning	20	

C. Key Experts' qualifications and competence for the Assignment: Attach CVs and Certificates 1. Team leader [12] 2. Power Transmission System Expert [10] 3. Power Generation expert [10] 4. Power System Protection expert [10] 5. Telecommunication and SCADA expert [5] 6. Renewable Energy Expert [5] 7. Energy Economics Expert [5] 8. Local Team Coordinator: [3]	60	
D. Capacity building and Benchmarking strategy a) Knowledge and skills transfer approach (2 mks) b) Training implementation (4 mks) c) Benchmarking (study tours) (2 mks) d) Assessment of learning outcomes (2 mks)	10	
Table Footer : -		

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TENDERER DECLARATION : FORM FIN-1- FINANCIAL PROPOSAL SUBMISSION FORM

Table Header : -

TENDERER DECLARATION	Supplier response
A) NO RESERVATIONS: WE HAVE EXAMINED AND HAVE NO RESERVATIONS TO THE TENDERING DOCUMENT, INCLUDING ADDENDA (IF ANY) ISSUED IN ACCORDANCE WITH INSTRUCTIONS TO TENDERERS (ITC 13.2);	
B) ELIGIBILITY: WE MEET THE ELIGIBILITY REQUIREMENTS AND HAVE NO CONFLICT OF INTEREST IN ACCORDANCE WITH ITC 6.4	
C) TENDER/PROPOSAL-SECURING DECLARATION: WE HAVE NOT BEEN SUSPENDED NOR DECLARED INELIGIBLE BY THE PROCURING ENTITY BASED ON EXECUTION OF A TENDER-SECURING DECLARATION. OR PROPOSAL-SECURING DECLARATION IN KENYA IN ACCORDANCE WITH ITT 3.6;	
D) PROPOSAL VALIDITY PERIOD: OUR PROPOSAL; SHALL BE VALID FOR THE PERIOD SPECIFIED IN DATA SHEET 12.1 (AS AMENDED, IF APPLICABLE) FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE SPECIFIED IN DATA SHEET 18.5 (AS AMENDED, IF APPLICABLE), AND IT SHALL REMAIN BINDING UPON US AND MAY BE ACCEPTED AT ANY TIME BEFORE THE EXPIRATION OF THAT PERIOD;	

E) PERFORMANCE SECURITY: IF OUR TENDER IS ACCEPTED, WE COMMIT TO OBTAIN A PERFORMANCE SECURITY IN ACCORDANCE WITH THE TENDER DOCUMENT;	
F) ONE PROPOSAL PER TENDERER: WE ARE NOT SUBMITTING ANY OTHER TENDER(S) AS AN INDIVIDUAL TENDERER, AND WE ARE NOT PARTICIPATING IN ANY OTHER TENDER(S) AS A JOINT VENTURE MEMBER, OR AS A SUBCONTRACTOR, AND MEET THE REQUIREMENTS OF ITC 1.1	
G) SUSPENSION AND DEBARMENT: WE, ALONG WITH ANY OF OUR SUBCONTRACTORS, SUPPLIERS, CONSULTANTS, MANUFACTURERS, OR SERVICE PROVIDERS FOR ANY PART OF THE CONTRACT, ARE NOT SUBJECT TO, AND NOT CONTROLLED BY ANY ENTITY OR INDIVIDUAL THAT IS SUBJECT TO, A TEMPORARY SUSPENSION BY THE PROCURING ENTITY OR A DEBARMENT IMPOSED BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY BOARD. FURTHER, WE ARE NOT INELIGIBLE UNDER THE KENYA LAWS OR OFFICIAL REGULATIONS OR PURSUANT TO A DECISION OF INTERNATIONAL ORGANIZATIONS TO WHICH KENYA IS A MEMBER;	
H) BINDING CONTRACT: WE UNDERSTAND THAT THIS TENDER, TOGETHER WITH YOUR WRITTEN ACCEPTANCE THEREOF INCLUDED IN YOUR LETTER OF AWARD, SHALL NOT CONSTITUTE A BINDING CONTRACT BETWEEN US, UNTIL A FORMAL CONTRACT IS PREPARED AND EXECUTED;	

I) PROCURING ENTITY NOT BOUND TO ACCEPT: WE UNDERSTAND THAT YOU ARE NOT BOUND TO ACCEPT THE LOWEST EVALUATED COST TENDER, THE BEST EVALUATED TENDER OR ANY OTHER TENDER THAT YOU MAY RECEIVE;	
J) FRAUD AND CORRUPTION: WE HEREBY CERTIFY THAT WE HAVE TAKEN STEPS TO ENSURE THAT NO PERSON ACTING FOR US OR ON OUR BEHALF ENGAGES IN ANY TYPE OF FRAUD AND CORRUPTION. FURTHER, WE CONFIRM THAT WE HAVE READ AND UNDERSTOOD THE FULL CONTENT AND SCOPE OF FRAUD AND CORRUPTION AS INFORMED IN “APPENDIX 1- FRAUD AND CORRUPTION” .	
K) CODE OF ETHICAL CONDUCT: WE DECLARE THAT WE HAVE READ AND UNDERSTOOD THE CONTENTS OF THE CODE OF ETHICS FOR PERSONS PARTICIPATING IN PUBLIC PROCUREMENT AND ASSET DISPOSAL AND OUR RESPONSIBILITIES UNDER THE CODE AND WE COMMIT TO ABIDE BY THE PROVISIONS OF THE CODE OF ETHICS COPY AVAILABLE FROM WWW.PPRA.GO.KE DURING THE PROCUREMENT PROCESS AND THE EXECUTION OF ANY RESULTING CONTRACT	

L) ANTI-COMPETITIVE AND COLLUSIVE PRACTICES: WE HEREBY CERTIFY AND CONFIRM THAT THE TENDER IS GENUINE, NON-COLLUSIVE AND MADE WITH THE INTENTION OF ACCEPTING THE CONTRACT IF AWARDED. WE HAVE ARRIVED AT THE TENDER INDEPENDENTLY WITHOUT CONSULTATION, COMMUNICATION, AGREEMENT OR ARRANGEMENT WITH, ANY COMPETITOR ON BUT NOT LIMITED TO PRICES; METHODS, FACTORS OR FORMULAS USED TO CALCULATE PRICES; THE INTENTION OR DECISION TO SUBMIT, OR NOT TO SUBMIT, A TENDER; OR THE SUBMISSION OF A TENDER WHICH DOES NOT MEET THE SPECIFICATIONS OF THE REQUEST FOR TENDERS EXCEPT AS DISCLOSED IN THE TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE;	
M) BENEFICIAL OWNERSHIP INFORMATION: WE COMMIT TO PROVIDE TO THE PROCURING ENTITY THE BENEFICIAL OWNERSHIP INFORMATION IN CONFORMITY WITH THE BENEFICIAL OWNERSHIP DISCLOSURE FORM UPON RECEIPT OF NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT IN THE EVENT WE ARE THE SUCCESSFUL TENDERER IN THIS SUBJECT PROCUREMENT PROCEEDING.	
N) WE, THE TENDERER, HAVE DULY COMPLETED, SIGNED AND STAMPED THE FOLLOWING FORMS AS PART OF OUR TENDER:	
i. Tenderer's Eligibility & Confidential Business Questionnaire	

ii. Self-Declaration of the Tenderer (FORM SD 1 & SD 2)	
Table Footer : -	

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FINANCIAL PROPOSAL : FORM FIN-1- FINANCIAL PROPOSAL SUBMISSION FORM

Table Header : OUR FINANCIAL PROPOSAL INCLUSIVE OF ALL TAXES IN ACCORDANCE WITH ITC 24.2 IN THE DATA SHEET IS AS BELOW:		
TOTAL AMOUNT IN FIGURES	**TOTAL AMOUNT IN WORDS**	**CURRENCY**
Table Footer : PLEASE NOTE THAT ALL SHALL BE THE SAME AS IN FORM FIN-2		

Sr no.	Formula
1	TOTAL AMOUNT IN WORDS=TOTAL AMOUNT IN FIGURES

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OPTION 2 TENDER PRICE (MULTIPLE LOTS): : FORM FIN-1- FINANCIAL PROPOSAL SUBMISSION FORM

Table Header : -

LOT NO/DESCRIPTION	CURRENCY	TOTAL PRICE IN FIGURES	TOTAL PRICE IN WORDS

Table Footer : -

Sr no.	Formula
1	TOTAL PRICE IN WORDS=TOTAL PRICE IN FIGURES

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LOCAL TAXES : FORM FIN-1- FINANCIAL PROPOSAL SUBMISSION FORM

Table Header : PLEASE NOTE THAT ALL AMOUNTS SHALL BE THE SAME AS IN FORM FIN-2}		
AMOUNT IN FIGURES	**AMOUNT IN WORDS**	**CURRENCY**
Table Footer : -		

Sr no.	Formula
1	AMOUNT IN WORDS=AMOUNT IN FIGURES

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COMMISSIONS, GRATUITIES, FEES : FORM FIN-1- FINANCIAL PROPOSAL SUBMISSION FORM

Table Header : WE HAVE PAID, OR WILL PAY THE FOLLOWING COMMISSIONS, GRATUITIES, OR FEES WITH RESPECT TO THE TENDERING PROCESS OR IMPLEMENTATION OF THE CONTRACT IF NO PAYMENTS ARE MADE OR PROMISED, ADD THE FOLLOWING STATEMENT: “NO COMMISSIONS OR GRATUITIES HAVE BEEN OR ARE TO BE PAID BY US TO AGENTS OR ANY THIRD PARTY RELATING TO THIS PROPOSAL AND CONTRACT EXECUTION

NAME OF RECEPIENT	ADDRESS	REASON	AMOUNT

Table Footer : IF NO PAYMENTS ARE MADE OR PROMISED, ADD THE FOLLOWING STATEMENT: “NO COMMISSIONS OR GRATUITIES HAVE BEEN OR ARE TO BE PAID BY US TO AGENTS OR ANY THIRD PARTY RELATING TO THIS PROPOSAL AND CONTRACT EXECUTION

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STATE OWNED ENTERPRISE OR INSTITUTION : FORM FIN-1- FINANCIAL PROPOSAL SUBMISSION FORM

Table Header : -	
STATEMENT	**TENDERER'S RESPONSE**
WE ARE NOT A STATE- OWNED ENTERPRISE OR INSTITUTION	
WE ARE A STATE-OWNED ENTERPRISE OR INSTITUTION BUT MEET THE REQUIREMENTS OF ITC 6.6(C)	
Table Footer : -	

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SIGN OFF : FORM FIN-1- FINANCIAL PROPOSAL SUBMISSION FORM

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE	DATE
WE UNDERSTAND YOU ARE NOT BOUND TO ACCEPT ANY PROPOSAL YOU RECEIVE				

Table Footer : {FOR A JOINT VENTURE, EITHER ALL MEMBERS SHALL SIGN OR ONLY THE LEAD MEMBER/CONSULTANT, IN WHICH CASE THE POWER OF ATTORNEY TO SIGN ON BEHALF OF ALL MEMBERS SHALL BE ATTACHED}

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COST OF THE FINANCIAL PROPOSAL : PRICE SCHEDULE-SUMMARY OF COSTS

Table Header : {CONSULTANT MUST STATE THE PROPOSED COSTS IN ACCORDANCE WITH ITC 16.4 OF THE DATA SHEET; DELETE COLUMNS WHICH ARE NOT USED}

1.REMUNERATION	2. REIMBURSABLES	3. SUBTOTAL (COL 1+COL.2)	4. CURRENCY	5.CAPACITY BUILDING LEVY (COL. 3*0.0003)	6.APPLICABLE TAXES	7. TOTAL COST OF THE FINANCIAL PROPOSAL (COL.3+COL. 5+COL.6)	UNSPSC CODE	UNSPSC DESCRIPTION	UNIT OF ISSUE	UNIT PRICE	QUANTITY
							83101904	CONSULTANCY SERVICES FOR STUDY OF THE KENYA ELECTRIC POWER SYSTEM	EACH		1

Table Footer : -

Sr no.	Formula
1	3. SUBTOTAL (COL 1+COL.2)=1.REMUNERATION+2. REIMBURSABLES
2	5.CAPACITY BUILDING LEVY (COL.3*0.0003)=3. SUBTOTAL (COL 1+COL.2)*0.0003
3	7. TOTAL COST OF THE FINANCIAL PROPOSAL (COL.3+COL.5+COL.6) =3. SUBTOTAL (COL 1+COL.2)+5.CAPACITY BUILDING LEVY (COL.3*0.0003)+6.APPLICABLE TAXES
4	7. TOTAL COST OF THE FINANCIAL PROPOSAL (COL.3+COL.5+COL.6) =TOTAL(7. TOTAL COST OF THE FINANCIAL PROPOSAL (COL.3+COL. 5+COL.6))

REMUNERATION : FORM FIN-3A- BREAKDOWN OF REMUNERATION

Table Header : -

NAME	TYPE OF EXPERT	POSITION (AS IT IS IN TECH 6)	PERSON-MONTH REMUNERATION RATE (HOME)	PERSON-MONTH REMUNERATION RATE (FIELD)	TIME INPUT IN PERSON/MONTH (FROM TECH-6)	{CURRENCY # 1- AS IN FIN-2}	{CURRENCY# 2- AS IN FIN-2}	{CURRENCY# 3- AS IN FIN-2}	{LOCAL CURRENCY- AS IN FIN-2} KEY EXPERT

Table Footer : -

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CONSULTANT'S DECLARATION : FORM FIN 3B- CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES

Table Header : -

CONSULTANT'S DECLARATION	CONSULTANT'S RESPONSE
WE HEREBY CONFIRM THAT: A) THE BASIC FEES INDICATED IN THE ATTACHED TABLE ARE TAKEN FROM THE FIRM'S PAY ROLL RECORDS AND REFLECT THE CURRENT RATES OF THE EXPERTS LISTED WHICH HAVE NOT BEEN RAISED OTHER THAN WITHIN THE NORMAL ANNUAL PAY INCREASE POLICY AS APPLIED TO ALL THE CONSULTANT'S EXPERTS; B) ATTACHED ARE TRUE COPIES OF THE LATEST PAY SLIPS OF THE EXPERTS LISTED; C) THEAWAY-FROM-HOMEOFFICEALLOWANCESIN DICATEDBELOWARETHOSETHATTHECONSULTA NTHASAGREEDTOPAYFORTHIS ASSIGNMENT TO THE EXPERTS LISTED; D) THE FACTORS LISTED IN THE ATTACHED TABLE FOR SOCIAL CHARGES AND OVERHEAD ARE BASED ON THE FIRM'S AVERAGE COST EXPERIENCES FOR THE LATEST THREE YEARS AS REPRESENTED BY THE FIRM'S FINANCIAL STATEMENTS; AND E) SAID FACTORS FOR OVERHEAD AND SOCIAL CHARGES DO NOT INCLUDE ANY BONUSES OR OTHER MEANS OF PROFIT-SHARING.	

Table Footer : -

SIGN OFF : FORM FIN 3B- CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION	DATE
WE CONFIRM THAT INFORMATION PROVIDED ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DI SQUALIFICATION OF OUR TENDER				

Table Footer : -

PERSONNEL (HOME OFFICE) : FORM 3C- FORM FOR CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES

Table Header : -

NAME	POSITION	1.BASIC REMUNERATION RATE PER WORKING MONTH/DAY /YEAR	2. SOCIAL CHARGES1	3. OVERHEAD1	4. SUB TOTAL PROFIT	5. PROFIT	6. AWAY FROM HOME OFFICE ALLOWANCE	7. PROPOSED FIXED RATE PER WORKING MONTH/DAY /HOUR	8. PROPOSED FIXED RATE PER WORKING MONTH/DAY /HOUR 1

Table Footer : -

PERSONNEL (PROCURING ENTITY'S COUNTRY) : FORM 3C- FORM FOR CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES

Table Header : -

NAME	POSITION	1. BASIC REMUNERATION RATE PER WORKING MONTH/DAY /YEAR	2. SOCIAL CHARGES1	3. OVERHEAD1	4. SUBTOTAL	5. PROFIT	6. AWAY FROM HOME OFFICE ALLOWANCE	7. PROPOSED FIXED RATE PER WORKING MONTH/DAY /HOUR	8. PROPOSED FIXED RATE PER WORKING MONTH/DAY /HOUR1

Table Footer : -

REIMBURSABLE EXPENSES : FORM FIN-4 BREAKDOWN OF REIMBURSABLE

Table Header : -

TYPE OF REIMBURSABLE EXPENSES UNIT	UNIT	UNIT COST	QUANTITY	CURRENCY # 1- AS IN FIN-2	CURRENCY # 2- AS IN FIN-2	CURRENCY# 3- AS IN FIN-2	LOCAL CURRENCY- AS IN FIN-2}

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SECTION 5: GENERAL CONDITIONS OF CONTRACT

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Detail

SECTION 5: GENERAL CONDITIONS OF CONTRACT

A.GENERAL PROVISIONS

1.DEFINITIONS

1.1 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS WHENEVER USED IN THIS CONTRACT HAVE THE FOLLOWING MEANINGS:

A) "APPLICABLE LAW" MEANS THE LAWS AND ANY OTHER INSTRUMENTS HAVING HE FORCE OF LAW IN KENYA AS SPECIFIED IN THE SCC.

B) "CONSULTANT" MEANS A LEGALLY ESTABLISHED PROFESSIONAL CONSULTING FIRM OR ENTITY SELECTED BY THE PROCURING ENTITY TO PROVIDE THE SERVICES UNDER THE SIGNED CONTRACT.

C) "CONTRACT" MEANS THE LEGALLY BINDING WRITTEN AGREEMENT SIGNED BETWEEN THE PROCURING ENTITY AND THE CONSULTANT AND WHICH INCLUDES ALL THE ATTACHED DOCUMENTS LISTED IN ITS PARAGRAPH1OF THE FORM OF CONTRACT (THE GENERAL CONDITIONS (GCC), THE SPECIAL CONDITIONS (SCC), AND THE APPENDICES).

D) "PROCURING ENTITY" MEANS THE PROCURING ENTITY THAT SIGNS THE CONTRACT FOR THE SERVICES WITH THE SELECTED CONSULTANT.

E) "DAY" MEANS A WORKING DAY UNLESS INDICATED OTHERWISE.

F) "EFFECTIVE DATE" MEANS THE DATE ON WHICH THIS CONTRACT COMES INTO FORCE AND EFFECT PURSUANT TO CLAUSE GCC 11.

G) “EXPERTS” MEANS, COLLECTIVELY, KEY EXPERTS, NON-KEY EXPERTS, OR ANY OTHER PERSONNEL OF THE CONSULTANT, SUB-CONSULTANT OR JV MEMBER(S) ASSIGNED BY THE CONSULTANT TO PERFORM THE SERVICES OR ANY PART THEREOF UNDER THE CONTRACT.

H) “FOREIGN CURRENCY” MEANS ANY CURRENCY OTHER THAN THE CURRENCY OF KENYA.

I) “GCC” MEAN THESE GENERAL CONDITIONS OF CONTRACT.

J) “GOVERNMENT” MEANS THE GOVERNMENT OF KENYA.

K) IN WRITING” MEANS COMMUNICATED IN WRITTEN FORM WITH PROOF OF DISPATCH.
L) “LAWS” MEANS ALL NATIONAL LEGISLATION, STATUTES, ORDINANCES, AND REGULATION S AND BY-LAWS OF ANY LEGALLY CONSTITUTED PUBLIC AUTHORITY.

M) “LETTER OF ACCEPTANCE” MEANS THE LETTER OF FORMAL ACCEPTANCE, SIGNED BY TH E SUPPLIER, INCLUDING ANY ANNEXED MEMORANDA COMPRISING AGREEMENTS BETWEEN AND SIGNED BY BOTH PARTIES.

N) “JOINT VENTURE (JV)” MEANS AN ASSOCIATION WITH OR WITHOUT A LEGAL PERSONALITY DISTINCT FROM THAT OF ITS MEMBERS, OF MORE THAN ONE ENTITY WHERE ONE MEMBER HAS THE AUTHORITY TO CONDUCT ALL BUSINESSES FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV, AND WHERE THE MEMBERS OF THE JV ARE JOINTLY AND SEVERALLY LIABLE TO THE PROCURING ENTITY FOR THE PERFORMANCE OF THE CONTRACT.

O) “KEY EXPERT(S)” MEANS AN INDIVIDUAL PROFESSIONAL WHOSE SKILLS, QUALIFICATIONS, KNOWLEDGE AND EXPERIENCE ARE CRITICAL TO THE PERFORMANCE OF THE SERVICES UNDER THE CONTRACT AND WHOSE CURRICULA VITAE (CV)WAS TAKEN INTO ACCOUNT IN THE TECHNICAL EVALUATION OF THE CONSULTANT'S PROPOSAL.

P) “LOCAL CURRENCY” MEANS THE KENYA SHILLINGS, THE CURRENCY OF KENYA.

Q) “NON-KEY EXPERT(S)” MEANS AN INDIVIDUAL PROFESSIONAL PROVIDED BY THE CONSULTANT OR ITS SUB-CONSULTANT TO PERFORM THE SERVICES OR ANY PART HERE OF UNDER THE CONTRACT.

R) “PARTY” MEANS THE PROCURING ENTITY OR THE CONSULTANT, AS THE CASE MAY BE, AND “PARTIES” MEANS BOTH OF THEM.

S) “SCC” MEANS THE SPECIAL CONDITIONS OF CONTRACT BY WHICH THE GCC MAY BE AMENDED OR SUPPLEMENTED BUT NOT OVER-WRITTEN.

T) “SERVICES” MEANS THE WORK TO BE PERFORMED BY THE CONSULTANT PURSUANT TO THIS CONTRACT, AS DESCRIBED IN APPENDIX A HERETO.

U) “SUB-CONSULTANTS” MEANS AN ENTITY TO WHOM/WHICH THE CONSULTANT SUBCONTRACTS ANY PART OF THE SERVICES WHILE REMAINING SOLELY LIABLE FOR THE EXECUTION OF THE CONTRACT.

V). THIRD PARTY “MEANS ANY PERSON OR ENTITY OTHER THAN THE GOVERNMENT, THE PROCURING ENTITY, THE CONSULTANT OR A SUB-CONSULTANT.

2.RELATIONSHIP BETWEEN THE PARTIES

2.1.NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS ESTABLISHING A RELATIONSHIP OF MASTER AND SERVANT OR OF PRINCIPAL AND AGENT AS BETWEEN THE PROCURING ENTITY AND THE CONSULTANT. THE CONSULTANT, SUBJECT TO THIS CONTRACT, HAS COMPLETE CHARGE OF THE EXPERTS AND SUB-CONSULTANTS, IF ANY, PERFORMING THE SERVICES AND SHALL BE FULLY RESPONSIBLE FOR THE SERVICES PERFORMED BY THEM OR ON THEIR BEHALF HEREUNDER.

3.LAW GOVERNING CONTRACT

3.1 THIS CONTRACT, ITS MEANING AND INTERPRETATION, AND THE RELATION BETWEEN THE PARTIES SHALL BE GOVERNED BY THE LAWS OF KENYA.

4.LANGUAGE

4.1 THIS CONTRACT HAS BEEN EXECUTED IN THE ENGLISH LANGUAGE, WHICH SHALL BE THE BINDING AND CONTROLLING LANGUAGE FOR ALL MATTERS RELATING TO THE MEANING OR INTERPRETATION OF THIS CONTRACT.

5.HEADINGS

5.1THE HEADINGS SHALL NOT LIMIT, ALTER OR AFFECT THE MEANING OF THIS CONTRACT.

6.COMMUNICATIONS

6.1 ANY COMMUNICATION REQUIRED OR PERMITTED TO BE GIVEN OR MADE PURSUANT TO THIS CONTRACT SHALL BE IN WRITING IN THE ENGLISH LANGUAGE. ANY SUCH NOTICE, REQUEST OR CONSENT SHALL BE DEEMED TO HAVE BEEN GIVEN OR MADE WHEN DELIVERED IN PERSON TO AN AUTHORIZED REPRESENTATIVE OF THE PARTY TO WHOM THE COMMUNICATION IS ADDRESSED, OR WHEN SENT TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THE **SCC.**

6.2 A PARTY MAY CHANGE ITS ADDRESS FOR NOTICE HERE UNDER BY GIVING THE OTHER PARTY ANY COMMUNICATION OF SUCH CHANGE TO THE ADDRESS SPECIFIED IN THE **SCC.**

7. LOCATION

7.1 HE SERVICES SHALL BE PERFORMED AT SUCH LOCATIONS AS ARE SPECIFIED IN APPENDIX A HERETO AND, WHERE THE LOCATION OF A PARTICULAR TASK IS NOT SO SPECIFIED, AT SUCH LOCATIONS, WHETHER IN KENYA OR ELSEWHERE, AS THE PROCURING ENTITY MAY APPROVE.

8 AUTHORITY OF MEMBER IN CHARGE

8.1 IN CASE THE CONSULTANT IS A JOINT VENTURE, THE MEMBERS HEREBY AUTHORIZE THEM EMBER SPECIFIED IN THE **SCC** TO ACT ON THEIR BEHALF IN EXERCISING ALL THE CONSULTANT'S RIGHTS AND OBLIGATIONS TOWARDS THE PROCURING ENTITY UNDER THIS CONTRACT, INCLUDING WITHOUT LIMITATION THE RECEIVING OF INSTRUCTIONS AND PAYMENTS FROM THE PROCURING ENTITY.

9 AUTHORIZED REPRESENTATIVES

9.1 ANY ACTION REQUIRED OR PERMITTED TO BE TAKEN, AND ANY DOCUMENT REQUIRED OR PERMITTED TO BE EXECUTED UNDER THIS CONTRACT BY THE PROCURING ENTITY OR THE CONSULTANT MAY BE TAKEN OR EXECUTED BY THE OFFICIALS SPECIFIED IN THE SCC.

10. CORRUPT AND FRAUDULENT PRACTICES

10.1 THE GOVERNMENT REQUIRES COMPLIANCE WITH ITS POLICY REGARDING CORRUPT AND FRAUDULENT/PROHIBITED PRACTICES AS SET FORTH IN ITS LAWS AND POLICIES.

10.2 COMMISSIONS AND FEES-THE PROCURING ENTITY REQUIRES THE CONSULTANT TO DISCLOSE ANY COMMISSIONS, GRATUITIES OR FEES THAT MAY HAVE BEEN PAID OR ARE TO BE PAID TO A GENTS OR ANY OTHER PARTY WITH RESPECT TO THE SELECTION PROCESS OR EXECUTION OF THE CONTRACT. THE INFORMATION DISCLOSED MUST INCLUDE AT LEAST THE NAME AND ADDRESS OF THE AGENT OR OTHER PARTY, THE AMOUNT AND CURRENCY, AND THE PURPOSE OF THE COMMISSION, GRATUITY OR FEE. FAILURE TO DISCLOSE SUCH COMMISSIONS, GRATUITIES OR FEES MAY RESULT IN TERMINATION OF THE CONTRACT BY THE PROCURING ENTITY AND/OR SANCTIONS BY THE PPRA.

B.COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

11.EFFECTIVENESS OF CONTRACT

11.1 THIS CONTRACT SHALL COME INTO FORCE AND EFFECT ON THE DATE (THE "EFFECTIVE DATE") OF THE PROCURING ENTITY'S NOTICE TO THE CONSULTANT INSTRUCTING THE CONSULTANT TO BEGIN CARRYING OUT THE SERVICES. THIS NOTICE SHALL CONFIRM THAT THE EFFECTIVENESS CONDITIONS, IF ANY, LISTED IN THE **SCC** HAVE BEEN MET.

12.TERMINATION OF CONTRACT FOR FAILURE TO BECOME EFFECTIVE

12.1 IF THIS CONTRACT HAS NOT BECOME EFFECTIVE WITHIN SUCH TIME PERIOD AFTER THE DATE OF CONTRACT SIGNATURE AS SPECIFIED IN THE **SCC,** EITHER PARTY MAY, BY NOT LESS THAN TWENTY-TWO (22) DAYS WRITTEN NOTICE TO THE OTHER PARTY, DECLARE THIS CONTRACT TO BE NULL AND VOID, AND IN THE EVENT OF SUCH A DECLARATION BY EITHER PARTY, NEITHER PARTY SHALL HAVE ANY CLAIM AGAINST THE OTHER PARTY WITH RESPECT THERE TO.

13. COMMENCEMENT OF SERVICES

13.1 THE CONSULTANT SHALL CONFIRM AVAILABILITY OF KEY EXPERTS AND BEGINS CARRYING OUT THE SERVICES NOT LATER THAN THE NUMBER OF DAYS AFTER THE EFFECTIVE DATE SPECIFIED IN THE **SCC.**

14. EXPIRATION OF CONTRACT

14.1 UNLESS TERMINATED EARLIER PURSUANT TO CLAUSE GCC19 HEREOF, THIS CONTRACT SHALL EXPIRE AT THE END OF SUCH TIME PERIOD AFTER THE EFFECTIVE DATE AS SPECIFIED IN THE SCC

15.ENTIRE AGREEMENT

15.1 THIS CONTRACT CONTAINS ALL COVENANTS, STIPULATIONS AND PROVISIONS AGREED BY THE PARTIES. NO AGENT OR REPRESENTATIVE OF EITHER PARTY HAS AUTHORITY TO MAKE, AND THE PARTIES SHALL NOT BE BOUND BY OR BE LIABLE FOR, ANY STATEMENT, REPRESENTATION, PROMISE OR AGREEMENT NOT SET FORTH HEREIN.

16. MODIFICATIONS OR VARIATIONS

16.1 ANY MODIFICATION OR VARIATION OF THE TERMS AND CONDITIONS OF THIS CONTRACT, INCLUDING ANY MODIFICATION OR VARIATION OF THE SCOPE OF THE SERVICES, MAY ONLY BE MADE BY WRITTEN AGREEMENT BETWEEN THE PARTIES. HOWEVER, EACH PARTY SHALL GIVE DUE CONSIDERATION TO ANY PROPOSALS FOR MODIFICATION OR VARIATION MADE BY THE OTHER PARTY.

17. FORCE MAJEURE

A. DEFINITION

17.1 FOR THE PURPOSES OF THIS CONTRACT," FORCE MAJEURE" MEANS EVENT WHICH IS BEYOND THE REASONABLE CONTROL OF A PARTY, IS NOT FORESEEABLE, IS UNAVOIDABLE, AND MAKES A PARTY'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER IMPOSSIBLE OR SO IMPRACTICAL AS REASONABLY TO BE CONSIDERED IMPOSSIBLE UNDER THE CIRCUMSTANCES, AND SUBJECT TO THOSE REQUIREMENTS, INCLUDES, BUT IS NOT LIMITED TO, WAR, RIOTS, CIVIL DISORDER, EARTHQUAKE, FIRE, EXPLOSION, STORM, FLOOD OR OTHER ADVERSE WEATHER CONDITIONS, STRIKES, LOCKOUTS OR OTHER INDUSTRIAL ACTION CONFISCATION OR ANY OTHER ACTION BY GOVERNMENT AGENCIES.

17.2 FORCE MAJEURE SHALL NOT INCLUDE (I) ANY EVENT WHICH HIS CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTION OF A PARTY OR SUCH PARTY'S EXPERTS, SUB-CONSULTANTS OR AGENTS OR EMPLOYEES, NOR (II) ANY EVENT WHICH A DILIGENT PARTY COULD REASONABLY HAVE BEEN EXPECTED TO BOTH TAKE INTO ACCOUNT AT THE TIME OF THE CONCLUSION OF THIS CONTRACT AND AVOID OR OVER COME IN THE CARRYING OUT OF ITS OBLIGATIONS HERE UNDER.

17.3 FORCE MAJEURE SHALL NOT INCLUDE INSUFFICIENCY OF FUNDS OR FAILURE TO MAKE ANY PAYMENT REQUIRED HERE UNDER.

B. NO BREACH OF CONTRACT

17.4 THE FAILURE OF A PARTY TO FULFIL ANY OF ITS OBLIGATIONS HERE UNDER SHALL NOT BE CONSIDERED TO BE A BREACH OF, OR DEFAULT UNDER, THIS CONTRACT IN SO FAR AS SUCH INABILITY ARISES FROM AN EVENT OF FORCE MAJEURE, PROVIDED THAT THE PARTY AFFECTED BY SUCH AN EVENT HAS TAKEN ALL REASONABLE PRECAUTIONS, DUE CARE AND REASONABLE ALTERNATIVE MEASURES, ALL WITH THE OBJECTIVE OF CARRYING OUT THE TERMS AND CONDITIONS OF THIS CONTRACT.

C. MEASURES TO BE TAKEN

17.5 A PARTY AFFECTED BY AN EVENT OF FORCE MAJEURE SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT AS FAR AS IS REASONABLY PRACTICAL AND SHALL TAKE ALL REASONABLE MEASURES TO MINIMIZE THE CONSEQUENCES OF ANY EVENT OF FORCE MAJEURE.

17.6 A PARTY AFFECTED BY AN EVENT OF FORCE MAJEURE SHALL NOTIFY THE OTHER PARTY OF SUCH EVENT AS SOON AS POSSIBLE, AND IN ANY CASE NOT LATER THAN FOURTEEN (14) CALENDAR DAYS FOLLOWING THE OCCURRENCE OF SUCH EVENT, PROVIDING EVIDENCE OF THE NATURE AND CAUSE OF SUCH EVENT, AND SHALL SIMILARLY GIVE WRITTEN NOTICE OF THE RESTORATION OF NORMAL CONDITIONS AS SOON AS POSSIBLE.

A) ANY PERIOD WITHIN WHICH A PARTY SHALL, PURSUANT TO THIS CONTRACT, COMPLETE ANY ACTION OR TASK, SHALL BE EXTENDED FOR A PERIOD EQUAL TO THE TIME DURING WHICH SUCH PARTY WAS UNABLE TO PERFORM SUCH ACTION AS A RESULT OF FORCE MAJEURE.

B) DURING THE PERIOD OF THEIR INABILITY TO PERFORM THE SERVICES AS A RESULT OF AN EVENT OF FORCE MAJEURE, THE CONSULTANT, UPON INSTRUCTIONS BY THE PROCURING ENTITY, SHALL EITHER:

C) DEMOBILIZE, IN WHICH CASE THE CONSULTANT SHALL BE REIMBURSED FOR ADDITIONAL COSTS THEY REASONABLY AND NECESSARILY INCURRED, AND, IF REQUIRED BY THE PROCURING ENTITY, IN REACTIVATING THE SERVICES, OR

D) CONTINUE WITH THE SERVICES TO THE EXTENT REASONABLY POSSIBLE, IN WHICH CASE THE CONSULTANT SHALL CONTINUE TO BE PAID UNDER THE TERMS OF THIS CONTRACT AND BE REIMBURSED OR ADDITIONAL COSTS REASONABLY AND NECESSARILY INCURRED.

17.7 IN THE CASE OF DISAGREEMENT BETWEEN THE PARTIES AS TO THE EXISTENCE OR EXTENT OF FORCE MAJEURE, THE MATTER SHALL BE SETTLED ACCORDING TO CLAUSE GCC 44.

18. SUSPENSION

18.1 THE PROCURING ENTITY MAY, BY WRITTEN NOTICE OF SUSPENSION TO THE CONSULTANT, SUSPEND ALL PAYMENTS TO THE CONSULTANT HERE UNDER IF THE CONSULTANT FAILS TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT, INCLUDING THE CARRYING OUT OF THE SERVICES, PROVIDED THAT SUCH NOTICE OF SUSPENSION (I)SHALL SPECIFY THE NATURE OF THE FAILURE, AND (II) SHALL REQUEST THE CONSULTANT TO REMEDY SUCH FAILURE WITHIN A PERIOD NOT EXCEEDING THIRTY (30) CALENDAR DAYS AFTER RECEIPT BY THE CONSULTANT OF SUCH NOTICE OF SUSPENSION

19. TERMINATION

19.1 THIS CONTRACT MAY BE TERMINATED BY EITHER PARTY AS PER PROVISIONS SET UP BELOW:

A. BY THE PROCURING ENTITY

19.1.1 THE PROCURING ENTITY MAY TERMINATE THIS CONTRACT IN CASE OF THE OCCURRENCE OF ANY OF THE EVENTS SPECIFIED IN PARAGRAPHS (A) THROUGH (F) OF THIS CLAUSE. IN SUCH AN OCCURRENCE, THE PROCURING ENTITY SHALL GIVE AT LEAST THIRTY (30) CALENDAR DAYS' WRITTEN NOTICE OF TERMINATION TO THE CONSULTANT IN CASE OF THE EVENTS REFERRED TO IN(A)THROUGH(D); AT LEAST SIXTY (60) CALENDAR DAYS' WRITTEN NOTICE IN CASE OF THE EVENT REFERRED TO IN (E); AND AT LEAST FIVE (5) CALENDAR DAYS 'WRITTEN NOTICE IN CASE OF THE EVENT REFERRED TO IN (F):

A) IF THE CONSULTANT FAILS TO REMEDY A FAILURE IN THE PERFORMANCE OF ITS OBLIGATIONS HERE UNDER, AS SPECIFIED IN A NOTICE OF SUSPENSION PURSUANT TO CLAUSE GCC 18;

B) IF THE CONSULTANT BECOMES (OR, IF THE CONSULTANT CONSISTS OF MORE THAN ONE ENTITY, IF ANY OF ITS MEMBERS BECOMES) INSOLVENT OR BANKRUPT OR ENTER INTO ANY AGREEMENTS WITH THEIR CREDITORS FOR RELIEF OF DEBT OR TAKE ADVANTAGE OF ANY LAW FOR THE BENEFIT OF DEBTORS OR GO IN TO LIQUIDATION OR RECEIVERSHIP WHETHER COMPULSORY OR VOLUNTARY;

C) IF THE CONSULTANT FAILS TO COMPLY WITH ANY FINAL DECISION REACHED AS A RESULT OF ARBITRATION PROCEEDINGS PURSUANT TO CLAUSE GCC 44;

D) IF, AS THE RESULT OF FORCE MAJEURE, THE CONSULTANT IS UNABLE TO PERFORM A MATERIAL PORTION OF THE SERVICES FOR A PERIOD OF NOT LESS THAN SIXTY (60) CALENDAR DAYS;

E) IF THE PROCURING ENTITY, IN ITS SOLE DISCRETION AND FOR ANY REASON WHATSOEVER, DECIDES TO TERMINATE THIS CONTRACT;

F) IF THE CONSULTANT FAILS TO CONFIRM AVAILABILITY OF KEY EXPERTS AS REQUIRED IN CLAUSE GCC13.1.

19.1.2 FURTHERMORE, IF THE PROCURING ENTITY DETERMINES THAT THE CONSULTANT HAS ENGAGED IN CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE [OR OBSTRUCTIVE] PRACTICES, IN COMPETING FOR OR IN EXECUTING THE CONTRACT, THEN THE PROCURING ENTITY MAY, AFTER GIVING FOURTEEN (14) CALENDAR DAYS WRITTEN NOTICE TO THE CONSULTANT, TERMINATE THE CONSULTANT'S EMPLOYMENT UNDER THE CONTRACT.

B BY THE CONSULTANT

19.1.3

A) THE CONSULTANT MAY TERMINATE THIS CONTRACT, BY NOT LESS THAN THIRTY (30) CALENDAR DAYS' WRITTEN NOTICE TO THE PROCURING ENTITY, IN CASE OF THE OCCURRENCE OF ANY OF THE EVENTS SPECIFIED IN PARAGRAPHS(A)THROUGH(D)OF THIS CLAUSE.

B) IF THE PROCURING ENTITY FAILS TO PAY ANY MONEY DUE TO THE CONSULTANT PURSUANT TO THIS CONTRACT AND NOT SUBJECT TO DISPUTE PURSUANT TO CLAUSE GCC44 WITHIN FORTY-FIVE (45) CALENDAR DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE CONSULTANT THAT SUCH PAYMENT IS OVERDUE.

C) IF, AS THE RESULT OF FORCE MAJEURE, THE CONSULTANT IS UNABLE TO PERFORM A MATERIAL PORTION OF THE SERVICES FOR A PERIOD OF NOT LESS THAN SIXTY (60) CALENDAR DAYS.

D) IF THE PROCURING ENTITY FAILS TO COMPLY WITH ANY FINAL DECISION REACHED AS A RESULT OF ARBITRATION PURSUANT TO CLAUSE GCC44.

E) IF THE PROCURING ENTITY IS IN MATERIAL BREACH OF ITS OBLIGATIONS PURSUANT TO THIS CONTRACT AND HAS NOT REMEDIED THE SAME WITHIN FORTY-FIVE (45) DAYS (OR SUCH LONGER PERIOD AS THE CONSULTANT MAY HAVE SUBSEQUENTLY APPROVED IN WRITING) FOLLOWING THE RECEIPT BY THE PROCURING ENTITY OF THE CONSULTANT'S NOTICE SPECIFYING SUCH BREACH.

C. CESSATION OF RIGHTS AND OBLIGATIONS

19.1.4 UPON TERMINATION OF THIS CONTRACT PURSUANT TO CLAUSES GCC 12 OR GCC 19 HEREOF, OR UPON EXPIRATION OF THIS CONTRACT PURSUANT TO CLAUSE GCC14, ALL RIGHTS AND OBLIGATIONS OF THE PARTIES HERE UNDER SHALL CEASE, EXCEPT (I) SUCH RIGHTS AND OBLIGATIONS AS MAY HAVE ACCRUED ON THE DATE OF TERMINATION OR EXPIRATION, (II) THE OBLIGATION OF CONFIDENTIALITY SET FORTH IN CLAUSE GCC22, (III) THE CONSULTANT'S OBLIGATION TO PERMIT IN SECTION, COPYING AND AUDITING OF THEIR ACCOUNTS AND RECORDS SET FORTH IN CLAUSE GCC25, AND (IV) ANY RIGHT WHICH A PARTY MAY HAVE UNDER THE APPLICABLE LAW.

D CESSATION OF SERVICES

19.1.5. UPON TERMINATION OF THIS CONTRACT BY NOTICE OF EITHER PARTY TO THE OTHER PURSUANT TO CLAUSES GCC 19A OR GCC 19B, THE CONSULTANT SHALL IMMEDIATELY UPON DISPATCH OR RECEIPT OF SUCH NOTICE, TAKE ALL NECESSARY STEPS TO BRING THE SERVICES TO A CLOSE IN A PROMPT AND ORDERLY MANNER AND SHALL MAKE EVERY REASONABLE EFFORT TO KEEP EXPENDITURES FOR THIS PURPOSE TO A MINIMUM. WITH RESPECT TO DOCUMENTS PREPARED BY THE CONSULTANT AND EQUIPMENT AND MATERIALS FURNISHED BY THE PROCURING ENTITY, THE CONSULTANT SHALL PROCEED AS PROVIDED, RESPECTIVELY, BY CLAUSES GCC27OR GCC28.

E . PAYMENT UP ON TERMINATION

19.1.6 UP ON TERMINATION OF THIS CONTRACT, THE PROCURING ENTITY SHALL MAKE THE FOLLOWING PAYMENTS TO THE CONSULTANT:

A) PAYMENT OR SERVICES SATISFACTORILY PERFORMED PRIOR TO THE EFFECTIVE DATE OF TERMINATION; AND

B) IN THE CASE OF TERMINATION PURSUANT TO PARAGRAPHS (D) AND (E) OF CLAUSE GCC 19.1.1, REIMBURSEMENT OF ANY REASONABLE COST INCIDENTAL TO THE PROMPT AND ORDERLY TERMINATION OF THIS CONTRACT, INCLUDING THE COST OF THE RETURN TRAVEL OF THE EXPERTS

C.OBLIGATION S OF THE CONSULTANT

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20.GENERAL

A. STANDARD OF PERFORMANCE

20.1 THE CONSULTANT SHALL PERFORM THE SERVICES AND CARRY OUT THE SERVICES WITH ALL DUE DILIGENCE, EFFICIENCY AND ECONOMY, IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL STANDARDS AND PRACTICES, AND SHALL OBSERVE SOUND MANAGEMENT PRACTICES, AND EMPLOY APPROPRIATE TECHNOLOGY AND SAFE AND EFFECTIVE EQUIPMENT, MACHINERY, MATERIALS AND METHODS. THE CONSULTANT SHALL ALWAYS ACT, IN RESPECT OF ANY MATTER RELATING TO THIS CONTRACT OR TO THE SERVICES, AS A FAITHFUL ADVISER TO THE PROCURING ENTITY, AND SHALL AT ALL TIMES SUPPORT AND SAFEGUARD THE PROCURING ENTITY'S LEGITIMATE INTERESTS IN ANY DEALINGS WITH THE THIRD PARTIES.

20.2 THE CONSULTANT SHALL EMPLOY AND PROVIDE SUCH QUALIFIED AND EXPERIENCED EXPERTS AND SUB-CONSULTANTS AS ARE REQUIRED TO CARRY OUT THE SERVICES.

20.3 THE CONSULTANT MAY SUBCONTRACT PART OF THE SERVICES TO AN EXTENT AND WITH SUCH KEY EXPERTS AND SUB- CONSULTANTS AS MAY BE APPROVED IN ADVANCE BY THE PROCURING ENTITY. NOTWITHSTANDING SUCH APPROVAL, THE CONSULTANT SHALL RETAIN FULL RESPONSIBILITY FOR THE SERVICES.

B. LAW APPLICABLE TO SERVICES

20.4. THE CONSULTANT SHALL PERFORM THE SERVICES IN ACCORDANCE WITH THE CONTRACT AND THE APPLICABLE LAW AND SHALL TAKE ALL PRACTICABLE STEPS TO ENSURE THAT ANY OF ITS EXPERTS AND SUB-CONSULTANTS, COMPLY WITH THE APPLICABLE LAW.

20.5 THROUGHOUT THE EXECUTION OF THE CONTRACT, THE CONSULTANT SHALL COMPLY WITH THE IMPORT OF GOODS AND SERVICES PROHIBITIONS IN KENYA WHEN
A) AS A MATTER OF LAW OR OFFICIAL REGULATIONS, KENYA PROHIBITS COMMERCIAL RELATIONS WITH THAT COUNTRY; OR
B) BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS, KENYA PROHIBITS ANY IMPORT OF GOODS FROM THAT COUNTRY OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTRY.

20.6. THE PROCURING ENTITY SHALL NOTIFY THE CONSULTANT IN WRITING OF RELEVANT LOCAL CUSTOMS, AND THE CONSULTANT SHALL, AFTER SUCH NOTIFICATION, RESPECT SUCH CUSTOMS.

21. CONFLICT OF INTERESTS

THE CONSULTANT SHALL HOLD THE PROCURING ENTITY'S INTEREST PARAMOUNT, WITHOUT ANY CONSIDERATION FOR FUTURE WORK, AND STRICTLY AVOID CONFLICT WITH OTHER ASSIGNMENTS OR THEIR OWN CORPORATE INTERESTS.

A) **CONSULTANT NOT TO BENEFIT FROM COMMISSIONS, DISCOUNTS, ETC.**

21.1.1 THE PAYMENT OF THE CONSULTANT PURSUANT TO GCC F (CLAUSES GCC 38 THROUGH 42) SHALL CONSTITUTE THE CONSULTANT'S ONLY PAYMENT IN CONNECTION WITH THIS CONTRACT AND, SUBJECT TO CLAUSE GCC21.1.3,THE CONSULTANT SHALL NOT ACCEPT FOR ITS OWN BENEFIT ANY TRADE COMMISSION, DISCOUNT OR SIMILAR PAYMENT IN CONNECTION WITH ACTIVITIES PURSUANT TO THIS CONTRACT OR IN THE DISCHARGE OF ITS OBLIGATIONS HERE UNDER, AND THE CONSULTANT SHALL USE ITS BEST EFFORTS TO ENSURE THAT ANY SUB-CONSULTANTS, AS WELL AS THE EXPERTS AND AGENTS OF EITHER OF THEM, SIMILARLY SHALL NOT RECEIVE ANY SUCH ADDITIONAL PAYMENT.

21.1.2 FURTHERMORE, IF THE CONSULTANT, AS PART OF THE SERVICES, HAS THE RESPONSIBILITY OF ADVISING THE PROCURING ENTITY ON THE PROCUREMENT OF GOODS, WORKS OR SERVICES, THE CONSULTANT SHALL AT ALL TIMES EXERCISE SUCH RESPONSIBILITY IN THE BEST INTEREST OF THE PROCURING ENTITY. ANY DISCOUNTS OR COMMISSIONS OBTAINED BY THE CONSULTANT IN THE EXERCISE OF SUCH PROCUREMENT RESPONSIBILITY SHALL BE FOR THE ACCOUNT OF THE PROCURING ENTITY.

B) **CONSULTANT AND AFFILIATES NOT TO ENGAGE IN CERTAIN ACTIVITIES**

21.1.3 THE CONSULTANT AGREES THAT THE PROCURING ENTITY, AS SPECIFIED IN THE **SCC** AND DURING THE TERM OF THIS CONTRACT AND AFTER ITS TERMINATION, THE CONSULTANT AND ANY ENTITY AFFILIATED WITH THE CONSULTANT, AS WELL AS ANY SUB-CONSULTANTS AND ANY ENTITY AFFILIATED WITH SUCH SUB- CONSULTANTS, SHALL BE DISQUALIFIED FROM PROVIDING GOODS, WORKS OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO THE CONSULTANT'S SERVICES FOR THE PREPARATION OR IMPLEMENTATION OF THE PROJECT.

C) PROHIBITION OF CONFLICTING ACTIVITIES

21.1.4 THE CONSULTANT SHALL NOT ENGAGE AND SHALL CAUSE ITS EXPERTS AS WELL AS ITS SUB-CONSULTANTS NOT TO ENGAGE, EITHER DIRECTLY OR INDIRECTLY, IN ANY BUSINESS OR PROFESSIONAL ACTIVITIES THAT WOULD CONFLICT WITH THE ACTIVITIES ASSIGNED TO THEM UNDER THIS CONTRACT.

D.) STRICT DUTY TO DISCLOSE CONFLICTING ACTIVITIES

21.1.5 THE CONSULTANT HAS AN OBLIGATION AND SHALL ENSURE THAT ITS EXPERTS AND SUB-CONSULTANTS SHALL HAVE AN OBLIGATION TO DISCLOSE ANY SITUATION OF ACTUAL OR POTENTIAL CONFLICT THAT IMPACTS THEIR CAPACITY TO SERVE THE BEST INTEREST OF THEIR PROCURING ENTITY, OR THAT MAY REASONABLY BE PERCEIVED AS HAVING THIS EFFECT. FAILURE TO DISCLOSE SAID SITUATIONS MAY LEAD TO THE DISQUALIFICATION OF THE CONSULTANT OR THE TERMINATION OF ITS CONTRACT.

22. CONFIDENTIALITY

22.1 EXCEPT WITH THE PRIOR WRITTEN CONSENT OF THE PROCURING ENTITY, THE CONSULTANT AND THE EXPERTS SHALL NOT AT ANY TIME COMMUNICATE TO ANY PERSON OR ENTITY ANY CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF THE SERVICES, NOR SHALL THE CONSULTANT AND THE EXPERTS MAKE PUBLIC THE RECOMMENDATIONS FORMULATED IN THE COURSE OF, OR BECAUSE OF, THE SERVICES

23. LIABILITY OF THE CONSULTANT

23.1 SUBJECT TO ADDITIONAL PROVISIONS, IF ANY, SET FOR IN THE **SCC,** THE CONSULTANT'S LIABILITY UNDER THIS CONTRACT SHALL BE AS DETERMINED UNDER THE APPLICABLE LAW.

24. INSURANCE TO BE TAKEN OUT BY THE CONSULTANT

24.1 THE CONSULTANT (I) SHALL TAKE OUT AND MAINTAIN AND SHALL CAUSE ANY SUB-CONSULTANTS TO TAKE OUT AND MAINTAIN, AT ITS (OR THE SUB-CONSULTANTS', AS THE CASE MAY BE) OWN COST BUT ON TERMS AND CONDITIONS APPROVED BY THE PROCURING ENTITY, INSURANCE AGAINST THE RISKS, AND FOR THE COVERAGE SPECIFIED IN THE SCC, AND (II) AT THE PROCURING ENTITY'S REQUEST, SHALL PROVIDE EVIDENCE TO THE PROCURING ENTITY SHOWING THAT SUCH INSURANCE HAS BEEN TAKEN OUT AND MAINTAINED AND THAT THE CURRENT PREMIUMS THEREFORE HAVE BEEN PAID. THE CONSULTANT SHALL ENSURE THAT SUCH INSURANCE IS IN PLACE PRIOR TO COMMENCING THE SERVICES AS STATED IN CLAUSE GCC13.

25. ACCOUNTING, INSPECTION AND AUDITING

25.1 THE CONSULTANT SHALL KEEP AND SHALL MAKE ALL REASONABLE EFFORTS TO CAUSE ITS SUB-CONSULTANTS TO KEEP, ACCURATE AND SYSTEMATIC ACCOUNTS AND RECORDS IN RESPECT OF THE SERVICES AND IN SUCH FORM AND DETAIL AS WILL CLEARLY IDENTIFY RELEVANT TIME CHANGES AND COSTS.

25.2 THE CONSULTANT SHALL PERMIT AND SHALL CAUSE ITS SUB-CONSULTANTS TO PERMIT, THE PPRA AND/ OR PERSONS APPOINTED BY THE PPRA TO INSPECT THE SITE AND /OR ALL ACCOUNTS AND RECORDS RELATING TO THE PERFORMANCE OF THE CONTRACT AND THE SUBMISSION OF THE PROPOSAL TO PROVIDE THE SERVICES, AND TO HAVE SUCH ACCOUNTS AND RECORDS AUDITED BY AUDITORS APPOINTED BY THE PPRA IF REQUESTED BY THE PPRA. THE CONSULTANT'S ATTENTION IS DRAWN TO CLAUSE GCC10 WHICH PROVIDES, INTERLAID, THAT ACTS INTENDED TO MATERIALLY IMPEDE THE EXERCISE OF THE PPRA'S INSPECTION AND AUDIT RIGHTS PROVIDED FOR UNDER THIS CLAUSE GCC25.2 CONSTITUTE A PROHIBITED PRACTICE SUBJECT TO CONTRACT TERMINATION (AS WELL AS TO A DETERMINATION OF IN ELIGIBILITY UNDER THE PPRA'S PREVAILING SANCTIONS PROCEDURES).

26. REPORTING OBLIGATIONS

26.1 THE CONSULTANT SHALL SUBMIT TO THE PROCURING ENTITY THE REPORTS AND DOCUMENTS SPECIFIED IN APPENDIX A, IN THE FORM, IN THE NUMBERS AND WITHIN THE TIME PERIODS SET FORTH IN THE SAID APPENDIX.

27. PROPRIETARY RIGHTS OF THE PROCURING ENTITY IN REPORTS AND RECORDS

27.1 UNLESS OTHERWISE INDICATED IN THE **SCC,** ALL REPORTS AND RELEVANT DATA AND INFORMATION SUCH AS MAPS, DIAGRAMS, PLANS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, SUPPORTING RECORDS OR MATERIAL COMPILED OR PREPARED BY THE CONSULTANT FOR THE PROCURING ENTITY IN THE COURSE OF THE SERVICES SHALL BE CONFIDENTIAL AND BECOME AND REMAIN THE ABSOLUTE PROPERTY OF THE PROCURING ENTITY. THE CONSULTANT SHALL, NOT LATER THAN UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, DELIVER ALL SUCH DOCUMENTS TO THE PROCURING ENTITY, TOGETHER WITH A DETAILED INVENTORY THEREOF. THE CONSULTANT MAY RETAIN A COPY OF SUCH DOCUMENTS, DATA AND/OR SOFTWARE BUT SHALL NOT USE THE SAME FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT PRIOR WRITTEN APPROVAL OF THE PROCURING ENTITY.

27.2 IF LICENSE AGREEMENTS ARE NECESSARY OR APPROPRIATE BETWEEN THE CONSULTANT AND THIRD PARTIES FOR PURPOSES OF DEVELOPMENT OF THE PLANS, DRAWINGS, SPECIFICATIONS, DESIGNS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, THE CONSULTANT SHALL OBTAIN THE PROCURING ENTITY'S PRIOR WRITTEN APPROVAL TO SUCH AGREEMENTS, AND THE PROCURING ENTITY SHALL BE ENTITLED AT ITS DISCRETION TO REQUIRE RECOVERING THE EXPENSES RELATED TO THE DEVELOPMENT OF THE PROGRAM(S) CONCERNED. OTHER RESTRICTIONS ABOUT THE FUTURE USE OF THESE DOCUMENTS AND SOFTWARE, IF ANY, SHALL BE SPECIFIED IN THE **SCC.**

28. EQUIPMENT, VEHICLES AND MATERIALS

28.1 EQUIPMENT, VEHICLES AND MATERIALS MADE AVAILABLE TO THE CONSULTANT BY THE PROCURING ENTITY OR PURCHASED BY THE CONSULTANT WHOLLY OR PARTLY WITH FUNDS PROVIDED BY THE PROCURING ENTITY, SHALL BE THE PROPERTY OF THE PROCURING ENTITY AND SHALL BE MARKED ACCORDINGLY. UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, THE CONSULTANT SHALL MAKE AVAILABLE TO THE PROCURING ENTITY AN INVENTORY OF SUCH EQUIPMENT, VEHICLES AND MATERIALS AND SHALL DISPOSE OF SUCH EQUIPMENT, VEHICLES AND MATERIALS IN ACCORDANCE WITH THE PROCURING ENTITY'S INSTRUCTIONS. WHILE IN POSSESSION OF SUCH EQUIPMENT, VEHICLES AND MATERIALS, THE CONSULTANT, UNLESS OTHERWISE INSTRUCTED BY THE PROCURING ENTITY IN WRITING, SHALL INSURE THEM AT THE EXPENSE OF THE PROCURING ENTITY IN AN AMOUNT EQUAL TO THEIR FULL REPLACEMENT VALUE.

28.2 ANY EQUIPMENT OR MATERIALS BROUGHT BY THE CONSULTANT OR ITS EXPERTS INTO KENYA FOR THE USE EITHER FOR THE PROJECT OR PERSONAL USE SHALL REMAIN THE PROPERTY OF THE CONSULTANT OR THE EXPERTS CONCERNED, AS APPLICABLE.

D.CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

29. DESCRIPTION OF KEY EXPERTS

29.1 THE TITLE, AGREED JOB DESCRIPTION, MINIMUM QUALIFICATION AND ESTIMATED PERIOD OF ENGAGEMENT TO CARRY OUT THE SERVICES OF EACH OF THE CONSULTANT'S KEY EXPERTS ARE DESCRIBED IN APPENDIX B.

30. REPLACEMENT OF KEY EXPERTS

30.1 EXCEPT AS THE PROCURING ENTITY MAY OTHERWISE AGREE IN WRITING, NO CHANGES SHALL BE MADE IN THE KEY EXPERTS.

30.2 NOTWITHSTANDING THE ABOVE, THE SUBSTITUTION OF KEY EXPERTS DURING CONTRACT EXECUTION MAY BE CONSIDERED ONLY BASED ON THE CONSULTANT'S WRITTEN REQUEST AND DUE TO CIRCUMSTANCES OUTSIDE THE REASONABLE CONTROL OF THE CONSULTANT, INCLUDING BUT NOT LIMITED TO DEATH OR MEDICAL IN CAPACITY. IN SUCH CASE, THE CONSULTANT SHALL FORTH WITH PROVIDE AS A REPLACEMENT, A PERSON OF EQUIVALENT OR BETTER QUALIFICATIONS AND EXPERIENCE, AND AT THE SAME RATE OF REMUNERATION.

31.REMOVAL OF EXPERTS OR SUB-CONSULTANTS

31.1 IF THE PROCURING ENTITYFINDSTHATANYOFTHEEXPERTSORSUB-CONSULTANTHASCOMMITTEDSERIOUSMISCONDUCTORHAS BEEN CHARGED WITH HAVING COMMITTED A CRIMINAL ACTION OR SHALL THE PROCURING ENTITY DETERMINE THAT CONSULTANT'S EXPERT OF SUB CONSULTANT HAVE ENGAGED IN CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE [OR OBSTRUCTIVE] PRACTICE WHILE PERFORMING THE SERVICES, THE CONSULTANT SHALL, AT THE PROCURING ENTITY'S WRITTEN REQUEST, PROVIDE A REPLACEMENT.

31.2 IN THE EVENT THAT ANY OF KEY EXPERTS, NON-KEY EXPERTS OR SUB-CONSULTANTS IS FOUND BY THE PROCURING ENTITY TO BE IN COMPETENT OR IN CAPABLE IN DISCHARGING ASSIGNED DUTIES, THE PROCURING ENTITY, SPECIFYING THE GROUNDS THEREFORE, MAY REQUEST THE CONSULTANT TO PROVIDE A REPLACEMENT.

31.3 ANY REPLACEMENT OF THE REMOVED EXPERTS OR SUB CONSULTANTS SHALL POSSESS BETTER QUALIFICATIONS AND EXPERIENCE AND SHALL BE ACCEPTABLE TO THE PROCURING ENTITY.

31.4 THE CONSULTANT SHALL BEAR ALL COSTS ARISING OUT OF OR INCIDENTAL TO ANY REMOVAL AND/OR REPLACEMENT OF SUCH EXPERTS.

E.OBLIGATIONS OF THE PROCURING ENTITY

32. ASSISTANCE AND EXEMPTIONS

32.1 UNLESS OTHERWISE SPECIFIED IN THE **SCC,** THE PROCURING ENTITY SHALL USE ITS BEST EFFORTS TO:

A ASSIST THE CONSULTANT WITH OBTAINING WORK PERMITS AND SUCH OTHER DOCUMENTS AS SHALL BE NECESSARY TO ENABLE THE CONSULTANT TO PERFORM THE SERVICES.

B ASSIST THE CONSULTANT WITH PROMPTLY OBTAINING, FOR THE EXPERTS AND, IF APPROPRIATE, THEIR ELIGIBLE DEPENDENTS, ALL NECESSARY ENTRY AND EXIT VISAS, RESIDENCE PERMITS, EXCHANGE PERMITS AND ANY OTHER DOCUMENTS REQUIRED FOR THEIR STAY IN KENYA WHILE CARRYING OUT THE SERVICES UNDER THE CONTRACT.

C FACILITATE PROMPT CLEARANCE THROUGH CUSTOMS OF ANY PROPERTY REQUIRED FOR THE SERVICES AND OF THE PERSONAL EFFECTS OF THE EXPERT SAND THEIR ELIGIBLE DEPENDENTS.

D ISSUE TO OFFICIALS, AGENTS AND REPRESENTATIVES OF THE GOVERNMENT ALL SUCH INSTRUCTIONS AND INFORMATION AS MAY BE NECESSARY OR APPROPRIATE FOR THE PROMPT AND EFFECTIVE IMPLEMENTATION OF THE SERVICES.

E ASSIST THE CONSULTANT AND THE EXPERTS AND ANY SUB-CONSULTANTS EMPLOYED BY THE CONSULTANT FOR THE SERVICES WITH OBTAINING EXEMPTION FROM ANY REQUIREMENT TO REGISTER OR OBTAIN ANY PERMIT TO PRACTICE THEIR PROFESSION OR TO ESTABLISH THEMSELVES EITHER INDIVIDUALLY OR AS A CORPORATE ENTITY IN KENYA ACCORDING TO THE APPLICABLE LAW IN KENYA

F ASSIST THE CONSULTANT, ANY SUB-CONSULTANTS AND THE EXPERTS OF EITHER OF THEM WITH OBTAINING THE PRIVILEGE, PURSUANT TO THE APPLICABLE LAW IN KENYA, OF BRINGING IN TO KENYA REASONABLE AMOUNTS OF FOREIGN CURRENCY FOR THE PURPOSES OF THE SERVICES OR FOR THE PERSONAL USE OF THE EXPERTS AND OF WITHDRAWING ANY SUCH AMOUNTS AS MAY BE EARNED THEREIN BY THE EXPERTS IN THE EXECUTION OF THE SERVICES.

G PROVIDE TO THE CONSULTANT ANY SUCH OTHER ASSISTANCE AS MAY BE SPECIFIED IN THE **SCC.**

33.ACCESS TO PROJECT SITE

33.1 THE PROCURING ENTITY WARRANTS THAT THE CONSULTANT SHALL HAVE, FREE OF CHARGE, UNIMPEDED ACCESS TO THE PROJECT SITE IN RESPECT OF WHICH ACCESS IS REQUIRED FOR THE PERFORMANCE OF THE SERVICES. THE PROCURING ENTITY WILL BE RESPONSIBLE FOR ANY DAMAGE TO THE PROJECT SITE OR ANY PROPERTY THEREON RESULTING FROM SUCH ACCESS AND WILL INDEMNIFY THE CONSULTANT AND EACH OF THE EXPERTS IN RESPECT OF LIABILITY FOR ANY SUCH DAMAGE, UNLESS SUCH DAMAGE IS CAUSED BY THE WILFUL DEFAULT OR NEGLIGENCE OF THE CONSULTANT OR ANY SUB-CONSULTANTS OR THE EXPERTS OF EITHER OF THEM.

34. CHANGE IN THE APPLICABLE LAW RELATED TO TAXES AND DUTIES

34.1 IF, AFTER THE DATE OF THIS CONTRACT, THERE IS ANY CHANGE IN THE APPLICABLE LAW IN KENYA WITH RESPECT TO TAXES AND DUTIES WHICH INCREASES OR DECREASES THE COST INCURRED BY THE CONSULTANT IN PERFORMING THE SERVICES, THEN THE REMUNERATION AND REIMBURSABLE EXPENSES OTHERWISE PAYABLE TO THE CONSULTANT UNDER THIS CONTRACT SHALL BE INCREASED OR DECREASED ACCORDINGLY BY AGREEMENT BETWEEN THE PARTIES HERETO, AND CORRESPONDING ADJUSTMENTS SHALL BE MADE TO THE CONTRACT PRICE AMOUNT SPECIFIED IN CLAUSE GCC 39.1

35.SERVICES, FACILITIES AND PROPERTY OF THE PROCURING ENTITY

35.1 THE PROCURING ENTITY SHALL MAKE AVAILABLE TO THE CONSULTANT AND THE EXPERTS, FOR THE PURPOSES OF THE SERVICES AND FREE OF ANY CHARGE, THE SERVICES, FACILITIES AND PROPERTY DESCRIBED IN THE TERMS OF REFERENCE (APPENDIX A) AT THE TIMES AND IN THE MANNER SPECIFIED IN SAID APPENDIX A.

36.COUNTERPART PERSONNEL

36.1 THE PROCURING ENTITY SHALL MAKE AVAILABLE TO THE CONSULTANT FREE OF CHARGE SUCH PROFESSIONAL AND SUPPORT COUNTERPART PERSONNEL, TO BE NOMINATED BY THE PROCURING ENTITY WITH THE CONSULTANT'S ADVICE, IF SPECIFIED IN APPENDIX A.

36.2 PROFESSIONAL AND SUPPORT COUNTERPART PERSONNEL, EXCLUDING PROCURING ENTITY'S LIAISON PERSONNEL, SHALL WORK UNDER THE EXCLUSIVE DIRECTION OF THE CONSULTANT. IF ANY MEMBER OF THE COUNTERPART PERSONNEL FAILS TO PERFORM ADEQUATELY ANY WORK AS SIGNED TO SUCH MEMBER BY THE CONSULTANT THAT IS CONSISTENT WITH THE POSITION OCCUPIED BY SUCH MEMBER, THE CONSULTANT MAY REQUEST THE REPLACEMENT OF SUCH MEMBER, AND THE PROCURING ENTITY SHALL NOT UNREASONABLY REFUSE TO ACT UPON SUCH REQUEST.

37. PAYMENT OBLIGATION

37.1 IN CONSIDERATION OF THE SERVICES PERFORMED BY THE CONSULTANT UNDER THIS CONTRACT, THE PROCURING ENTITY SHALL MAKE SUCH PAYMENTS TO THE CONSULTANT FOR THE DELIVERABLES SPECIFIED IN APPENDIX A AND IN SUCH MANNER AS IS PROVIDED BY GCC BELOW.

F.PAYMENTS TO THE CONSULTANT

38.CONTRACT PRICE

38.1 THE CONTRACT PRICE IS FIXED AND IS SET FORTH IN THE **SCC.** THE CONTRACT PRICE BREAKDOWN IS PROVIDED IN APPENDIX C.

38.2 ANY CHANGE TO THE CONTRACT PRICE SPECIFIED IN CLAUSE 38.1 CAN BE MADE ONLY IF THE PARTIES HAVE AGREED TO THE REVISED SCOPE OF SERVICES PURSUANT TO CLAUSE GCC 16 AND HAVE AMENDED IN WRITING THE TERMS OF REFERENCE IN APPENDIX A.

39.TAXES AND DUTIES

39.1 THE CONSULTANT, SUB-CONSULTANTS AND EXPERTS ARE RESPONSIBLE FOR MEETING ANY AND ALL TAX LIABILITIES ARISING OUT OF THE CONTRACT UNLESS IT IS STATED OTHERWISE IN THE **SCC**. CURRENCY OF PAYMENT.

39.2 ANY PAYMENT UNDER THIS CONTRACT SHALL BE MADE IN THE CURRENCY (IES) OF THE CONTRACT.

40.MODE OF BILLING AND PAYMENT

40.1 THE TOTAL PAYMENTS UNDER THIS CONTRACT SHALL NOT EXCEED THE CONTRACT PRICE SET FORTH IN CLAUSE GCC 38.1.

40.2 THE PAYMENTS UNDER THIS CONTRACT SHALL BE MADE IN LUMP-SUM INSTALMENTS AGAINST DELIVERABLES SPECIFIED IN APPENDIX A. THE PAYMENTS WILL BE MADE ACCORDING TO THE PAYMENT SCHEDULE STATED IN THE **SCC**.

40.2.1 ADVANCE PAYMENT: UNLESS OTHERWISE INDICATED IN THE SCC, AN ADVANCE PAYMENT SHALL BE MADE AGAINST AN ADVANCE PAYMENT BANK GUARANTEE ACCEPTABLE TO THE PROCURING ENTITY IN AN AMOUNT (OR AMOUNTS) AND IN A CURRENCY (OR CURRENCIES) SPECIFIED IN THE **SCC.** SUCH GUARANTEE (I) IS TO REMAIN EFFECTIVE UNTIL THE ADVANCE PAYMENT HAS BEEN FULLY SET OFF, AND (II) IS TO BE IN THE FORM SET FORTH IN APPENDIX D, OR IN SUCH OTHER FORM AS THE PROCURING ENTITY SHALL HAVE APPROVED IN WRITING. THE ADVANCE PAYMENTS WILL BE SET OFF BY THE PROCURING ENTITY IN EQUAL PORTIONS AGAINST THE LUMP-SUM INSTALMENTS SPECIFIED IN THE SCC UNTIL SAID ADVANCE PAYMENTS HAVE BEEN FULLY SET OFF.

40.2.2 THE LUMP-SUM INSTALMENT PAYMENTS. THE PROCURING ENTITY SHALL PAY THE CONSULTANT WITHIN SIXTY (60) DAYS AFTER THE RECEIPT BY THE PROCURING ENTITY OF THE DELIVERABLE(S) AND THE COVER INVOICE FOR THE RELATED LUMP-SUM INSTALMENT PAYMENT. THE PAYMENT CAN BE WITHHELD IF THE PROCURING ENTITY DOES NOT APPROVE THE SUBMITTED DELIVERABLE(S) AS SATISFACTORY IN WHICH CASE THE PROCURING ENTITY SHALL PROVIDE COMMENTS TO THE CONSULTANT WITHIN THE SAME SIXTY (60) DAYS PERIOD. THE CONSULTANT SHALL THEREUPON PROMPTLY MAKE ANY NECESSARY CORRECTIONS, AND THERE AFTER THE FORE GOING PROCESS SHALL BE REPEATED.

40.2.3 THE FINAL PAYMENT: THE FINAL PAYMENT UNDER THIS CLAUSE SHALL BE MADE ONLY AFTER THE FINAL REPORT HAS BEEN SUBMITTED BY THE CONSULTANT AND APPROVED AS SATISFACTORY BY THE PROCURING ENTITY. THE SERVICES SHALL THEN BE DEEMED COMPLETED AND FINALLY ACCEPTED BY THE PROCURING ENTITY. THE LAST LUMP-SUM INSTALMENT SHALL BE DEEMED APPROVED FOR PAYMENT BY THE PROCURING ENTITY WITHIN NINETY (90) CALENDAR DAYS AFTER RECEIPT OF THE FINAL REPORT BY THE PROCURING ENTITY UNLESS THE PROCURING ENTITY, WITHIN SUCH NINETY (90) CALENDAR DAY PERIOD, GIVES WRITTEN NOTICE TO THE CONSULTANT SPECIFYING IN DETAIL DEFICIENCIES IN THE SERVICES, THE FINAL REPORT. THE CONSULTANT SHALL THEREUPON PROMPTLY MAKE ANY NECESSARY CORRECTIONS, AND THEREAFTER THE FOREGOING PROCESS SHALL BE REPEATED. ANY AMOUNT THAT THE PROCURING ENTITY HAS PAID OR HAS CAUSED TO BE PAID IN ACCORDANCE WITH THIS CLAUSE IN EXCESS OF THE AMOUNTS PAYABLE IN ACCORDANCE WITH THE PROVISIONS OF THIS CONTRACT SHALL BE REIMBURSED BY THE CONSULTANT TO THE PROCURING ENTITY WITHIN THIRTY (30) DAYS AFTER RECEIPT BY THE CONSULTANT OF NOTICE THEREOF. ANY SUCH CLAIM BY THE PROCURING ENTITY FOR REIMBURSEMENT MUST BE MADE WITHIN TWELVE (12) CALENDAR MONTH S AFTER RECEIPT T BY THE PROCURING ENTITY OF A FINAL REPORT AND A FINAL INVOICE APPROVED BY THE PROCURING ENTITY IN ACCORDANCE WITH THE ABOVE.

40.2.4 ALL PAYMENTS UNDER THIS CONTRACT SHALL BE MADE TO THE ACCOUNTS OF THE CONSULTANT SPECIFIED IN THE SCC.

40.2.5 WITH THE EXCEPTION OF THE FINAL PAYMENT UNDER 40.2.3 ABOVE, PAYMENTS DO NOT CONSTITUTE ACCEPTANCE OF THE WHOLE SERVICES NOR RELIEVE THE CONSULTANT OF ANY OBLIGATIONS HERE UNDER.

41.INTEREST ON DELAYED PAYMENTS

41.1 IF THE PROCURING ENTITY HAD DELAYED PAYMENTS BEYOND THIRTY (30) DAYS AFTER THE DUE DATE STATED IN CLAUSE GCC 40.2.3, INTEREST SHALL BE PAID TO THE CONSULTANT ON ANY AMOUNT DUE BY, NOT PAID ON, SUCH DUE DATE FOR EACH DAY OF DELAY AT THE ANNUAL RATE STATED IN THE **SCC.**

G.FAIRNESS AND GOOD FAITH

42. GOOD FAITH

42.1 THE PARTIES UNDERTAKE TO ACT IN GOOD FAITH WITH RESPECT TO EACH OTHER'S RIGHTS UNDER THIS CONTRACT AND TO ADOPT ALL REASONABLE MEASURES TO ENSURE THE REALIZATION OF THE OBJECTIVES OF THIS CONTRACT.

H. SETTLEMENT OF DISPUTES

43. AMICABLE SETTLEMENT

43.1 THE PARTIES SHALL SEEK TO RESOLVE ANY DISPUTE AMICABLY BY MUTUAL CONSULTATION.

43.2 IF EITHER PARTY OBJECTS TO ANY ACTION OR IN ACTION OF THE OTHER PARTY, THE OBJECTING PARTY MAY FILE A WRITTEN NOTICE OF DISPUTE TO THE OTHER PARTY PROVIDING IN DETAIL THE BASIS OF THE DISPUTE. THE PARTY RECEIVING THE NOTICE OF DISPUTE WILL CONSIDER IT AND RESPOND IN WRITING WITHIN FOURTEEN (14) DAYS AFTER RECEIPT. IF THAT PARTY FAILS TO RESPOND WITHIN FOURTEEN (14) DAYS, OR THE DISPUTE CANNOT BE AMICABLY SETTLED WITHIN FOURTEEN (14) DAYS FOLLOWING THE RESPONSE OF THAT PARTY, CLAUSE GCC 45.1 SHALL APPLY.

44.DISPUTE RESOLUTION

44.1 ANY DISPUTE BETWEEN THE PARTIES ARISING UNDER OR RELATED TO THIS CONTRACT THAT CANNOT BE SETTLED AMICABLY MAY BE REFERRED TO BY EITHER PARTY TO THE ADJUDICATION /ARBITRATION IN ACCORDANCE WITH THE PROVISIONS SPECIFIED IN THE SCC.

A. GENERAL PROVISIONS (TIME-BASED CONTRACT)

A. GENERAL PROVISIONS (TIME-BASED CONTRACT)

1.DEFINITIONS

1.1 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS WHENEVER USED IN THIS CONTRACT HAVE THE FOLLOWING MEANINGS:

A) "APPLICABLE LAW" MEANS THE LAWS AND ANY OTHER INSTRUMENTS HAVING THE FORCE OF LAW IN KENYA AS SPECIFIED IN THE ***SCC.***

B) "PROCURING ENTITY" MEANS THE PROCURING ENTITY THAT SIGNS THE CONTRACT FOR THE SERVICES WITH THE SELECTED CONSULTANT.

C) "CONSULTANT" MEANS A LEGALLY - ESTABLISHED PROFESSIONAL CONSULTING FIRM OR ENTITY SELECTED BY THE PROCURING ENTITY TO PROVIDE THE SERVICES UNDER THE SIGNED CONTRACT.

D) "CONTRACT" MEANS THE LEGALLY BINDING WRITTEN AGREEMENT SIGNED BETWEEN THE PROCURING ENTITY AND THE CONSULTANT AND WHICH INCLUDES ALL THE ATTACHED DOCUMENTS LISTED IN ITS PARAGRAPH 1 OF THE FORM OF CONTRACT (THE GENERAL CONDITIONS (GCC), THE SPECIAL CONDITIONS (SCC), AND THE APPENDICES).

E) "DAY" MEANS A WORKING DAY UNLESS INDICATED OTHERWISE.

F) "EFFECTIVE DATE" MEANS THE DATE ON WHICH THIS CONTRACT COMES INTO FORCE AND EFFECT PURSUANT TO CLAUSE GCC11.

G) "EXPERTS" MEANS, COLLECTIVELY, KEY EXPERTS, NON-KEY EXPERTS, OR ANY OTHER PERSONNEL OF THE CONSULTANT, SUB-CONSULTANT OR JV MEMBER(S) ASSIGNED BY THE CONSULTANT TO PERFORM THE SERVICES OR ANY PART THEREOF UNDER THE CONTRACT.

H) "FOREIGN CURRENCY" MEANS ANY CURRENCY OTHER THAN THE KENYA SHILLING.

I) "GCC" MEANS THESE GENERAL CONDITIONS OF CONTRACT.

J) "GOVERNMENT" MEANS THE GOVERNMENT OF KENYA.

K) “JOINT VENTURE (JV)” MEANS AN ASSOCIATION WITH OR WITHOUT A LEGAL PERSONALITY DISTINCT FROM THAT OF ITS MEMBERS, OF MORE THAN ONE ENTITY WHERE ONE MEMBER HAS THE AUTHORITY TO CONDUCT ALL BUSINESSES FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV, AND WHERE THE MEMBERS OF THE JV ARE JOINTLY AND SEVERALLY LIABLE TO THE PROCURING ENTITY FOR THE PERFORMANCE OF THE CONTRACT.

L) “KEY EXPERT(S)” MEANS AN INDIVIDUAL PROFESSIONAL WHOSE SKILLS, QUALIFICATIONS, KNOWLEDGE AND EXPERIENCE ARE CRITICAL TO THE PERFORMANCE OF THE SERVICES UNDER THE CONTRACT AND WHOSE CURRICULA VITAE (CV) WAS TAKEN INTO ACCOUNT IN THE TECHNICAL EVALUATION OF THE CONSULTANT'S PROPOSAL.

M) “LOCAL CURRENCY” MEANS THE KENYA SHILLING.

N) “NON-KEY EXPERT(S)” MEANS AN INDIVIDUAL PROFESSIONAL PROVIDED BY THE CONSULTANT OR ITS SUB-CONSULTANT TO PERFORM THE SERVICES OR ANY PART THEREOF UNDER THE CONTRACT.

O) “PARTY” MEANS THE PROCURING ENTITY OR THE CONSULTANT, AS THE CASE MAY BE, AND “PARTIES” MEANS BOTH.

P) “SCC” MEANS THE SPECIAL CONDITIONS OF CONTRACT BY WHICH THE GCC MAY BE AMENDED OR SUPPLEMENTED BUT NOT OVER-WRITTEN.

Q) “SERVICES” MEANS THE WORK TO BE PERFORMED BY THE CONSULTANT PURSUANT TO THIS CONTRACT, AS DESCRIBED IN APPENDIX A HERETO.

R) “SUB-CONSULTANTS” MEANS AN ENTITY TO WHOM/WHICH THE CONSULTANT SUBCONTRACTS ANY PART OF THE SERVICES WHILE REMAINING SOLELY LIABLE FOR THE EXECUTION OF THE CONTRACT.

S) “THIRD PARTY” MEANS ANY PERSON OR ENTITY OTHER THAN THE GOVERNMENT, THE PROCURING ENTITY, THE CONSULTANT OR A SUB-CONSULTANT.

2. RELATIONSHIP BETWEEN THE PARTIES

2.1 NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS ESTABLISHING A RELATIONSHIP OF MASTER AND SERVANT OR OF PRINCIPAL AND AGENT AS BETWEEN THE PROCURING ENTITY AND THE CONSULTANT. THE CONSULTANT, SUBJECT TO THIS CONTRACT, HAS COMPLETE CHARGE OF THE EXPERTS AND SUB-CONSULTANTS, IF ANY, PERFORMING THE SERVICES AND SHALL BE FULLY RESPONSIBLE FOR THE SERVICES PERFORMED BY THE MORON THEIR BEHALF HERE UNDER.

3. LAW GOVERNING CONTRACT

3.1 THIS CONTRACT, ITS MEANING AND INTERPRETATION, AND THE RELATION BETWEEN THE PARTIES SHALL BE GOVERNED BY THE APPLICABLE LAW.

4. LANGUAGE

4.1 THIS CONTRACT HAS BEEN EXECUTED IN THE LANGUAGE SPECIFIED IN THE SCC, WHICH SHALL BE THE BINDING AND CONTROLLING LANGUAGE FOR ALL MATTERS RELATING TO THE MEANING OR INTERPRETATION OF THIS CONTRACT.

5. HEADINGS

5.1 THE HEADINGS SHALL NOT LIMIT, ALTER OR AFFECT THE MEANING OF THIS CONTRACT

6. COMMUNICATIONS

6.1 ANY COMMUNICATION REQUIRED OR PERMITTED TO BE GIVEN OR MADE PURSUANT TO THIS CONTRACT SHALL BE IN WRITING IN THE LANGUAGE SPECIFIED IN CLAUSE GCC3. ANY SUCH NOTICE, REQUEST OR CONSENT SHALL BE DEEMED TO HAVE BEEN GIVE NOR MADE WHEN DELIVERED IN PERSON TO AN AUTHORIZED REPRESENTATIVE OF THE PARTY TO WHOM THE COMMUNICATION IS ADDRESSED, OR WHEN SENT TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THE **SCC.**

6.2 A PARTY MAY CHANGE ITS ADDRESS FOR NOTICE HERE UNDER BY GIVING THE OTHER PARTY ANY COMMUNICATION OF SUCH CHANGE TO THE ADDRESS SPECIFIED IN THE **SCC.**

7. LOCATION

7.1 THE SERVICES SHALL BE PERFORMED AT SUCH LOCATIONS AS ARE SPECIFIED IN APPENDIX A HERE TO AND, WHERE THE LOCATION OF A PARTICULAR TASK IS NOT SO SPECIFIED, AT SUCH LOCATIONS, WHETHER IN KENYA OR ELSEWHERE, AS THE PROCURING ENTITY MAY APPROVE.

8. AUTHORITY OF MEMBER IN CHARGE

8.1 IN CASE THE CONSULTANT IS A JOINT VENTURE, THE MEMBERS HEREBY AUTHORIZE THE MEMBER SPECIFIED **IN THE SCC** TO ACT ON THEIR BEHALF IN EXERCISING ALL THE CONSULTANT'S RIGHTS AND OBLIGATIONS TOWARDS THE PROCURING ENTITY UNDER THIS CONTRACT, INCLUDING WITHOUT LIMITATION THE RECEIVING OF INSTRUCTIONS AND PAYMENTS FROM THE PROCURING ENTITY.

9. AUTHORIZED REPRESENTATIVES

9.1 ANY ACTION REQUIRED OR PERMITTED TO BE TAKEN, AND ANY DOCUMENT REQUIRED OR PERMITTED TO BE EXECUTED UNDER THIS CONTRACT BY THE PROCURING ENTITY OR THE CONSULTANT MAY BE TAKEN OR EXECUTED BY THE OFFICIALS SPECIFIED IN THE **SCC.**

10. CORRUPT AND FRAUDULENT PRACTICES

10.1 THEGOVERNMENTREQUIRESCOMPLIANCEWITHITSPOLICYANDLAWSINREGARDTOCORRUPTANDFRAUDULENTORPROHIBITED PRACTICES AS SET FORTH IN ITS LAWS AND POLICIES.

A. COMMISSIONS AND FEES

10.2 THE PROCURING ENTITY REQUIRES THE CONSULTANT TO DISCLOSE ANY COMMISSIONS, GRATUITIES OR FEES THAT MAY HAVE BEEN PAID OR ARE TO BE PAID TO AGENTS OR ANY OTHER PARTY WITH RESPECT TO THE SELECTION PROCESS OR EXECUTION OF THE CONTRACT. THE INFORMATION DISCLOSED MUST INCLUDE AT LEAST THE NAME AND ADDRESS OF THE AGENT OR THE OTHER PARTY, THE AMOUNT AND CURRENCY, AND THE PURPOSE OF THE COMMISSION, GRATUITY OR FEE. FAILURE TO DISCLOSE SUCH COMMISSIONS, GRATUITIES OR FEES MAY RESULT IN TERMINATION OF THE CONTRACT BY THE PROCURING ENTITY AND/OR SANCTIONS BY THE PPRA.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

11. EFFECTIVENESS OF CONTRACT

11.1 THIS CONTRACT SHALL COME INTO FORCE AND EFFECT ON THE DATE (THE "EFFECTIVE DATE") OF THE PROCURING ENTITY'S NOTICE TO THE CONSULTANT INSTRUCTING THE CONSULTANT TO BEGIN CARRYING OUT THE SERVICES. THIS NOTICE SHALL CONFIRM THAT THE EFFECTIVENESS CONDITIONS, IF ANY, LISTED IN THE **SCC** HAVE BEEN MET.

12. TERMINATIONS OF CONTRACT FOR FAILURE TO BECOME EFFECTIVE

12.1 IF THIS CONTRACT HAS NOT BECOME EFFECTIVE WITHIN SUCH TIME PERIOD AFTER THE DATE OF CONTRACT SIGNATURE AS SPECIFIED IN THE **SCC**, EITHER PARTY MAY, BY NOT LESS THAN TWENTY-TWO (22) DAYS WRITTEN NOTICE TO THE OTHER PARTY, DECLARE THIS CONTRACT TO BE NULL AND VOID, AND IN THE EVENT OF SUCH A DECLARATION BY EITHER PARTY, NEITHER PARTY SHALL HAVE ANY CLAIM AGAINST THE OTHER PARTY WITH RESPECT HERETO.

13. COMMENCEMENT OF SERVICES

13.1 THE CONSULTANT SHALL CONFIRM AVAILABILITY OF KEY EXPERTS AND BEGIN CARRYING OUT THE SERVICES NOT LATER THAN THE NUMBER OF DAYS AFTER THE EFFECTIVE DATE SPECIFIED IN **THE SCC.**

14. EXPIRATION OF CONTRACT

14.1 UNLESS TERMINATED EARLIER PURSUANT TO CLAUSE GCC 19 HEREOF, THIS CONTRACT SHALL EXPIRE AT THE END OF SUCH TIME PERIOD AFTER THE EFFECTIVE DATE AS SPECIFIED IN THE **SCC.**

15.ENTIRE AGREEMENT

15.1 THIS CONTRACT CONTAINS ALL COVENANTS, STIPULATIONS AND PROVISIONS AGREED BY THE PARTIES. NO AGENT OR REPRESENTATIVE OF EITHER PARTY HAS AUTHORITY TO MAKE, AND THE PARTIES SHALL NOT BE BOUND BY OR BE LIABLE FOR, ANY STATEMENT, REPRESENTATION, PROMISE OR AGREEMENT NOT SET FORTH HEREIN.

16. MODIFICATIONS OR VARIATIONS

16.1 ANY MODIFICATION OR VARIATION OF THE TERMS AND CONDITIONS OF THIS CONTRACT, INCLUDING ANY MODIFICATION OR VARIATION OF THE SCOPE OF THE SERVICES, MAY ONLY BE MADE BY WRITTEN AGREEMENT BETWEEN THE PARTIES. HOWEVER, EACH PARTY SHALL GIVE DUE CONSIDERATION TO ANY PROPOSALS FOR MODIFICATION, OR VARIATION MADE BY THE OTHER PARTY.

17. FORCE MAJEURE

A. DEFINITION

17.1 FOR THE PURPOSES OF THIS CONTRACT, "FORCE MAJEURE" MEANS AN EVENT WHICH IS BEYOND THE REASONABLE CONTROL OF A PARTY, IS NOT FORESEEABLE, IS UNAVOIDABLE, AND MAKES A PARTY'S PERFORMANCE OF ITS OBLIGATIONS HERE UNDER IMPOSSIBLE OR SO IMPRACTICAL AS REASONABLY TO BE CONSIDERED IMPOSSIBLE UNDER THE CIRCUMSTANCES, AND SUBJECT TO THOSE REQUIREMENTS, INCLUDES, BUT IS NOT LIMITED TO, WAR, RIOTS, CIVIL DISORDER, EARTHQUAKE, FIRE, EXPLOSION, STORM, FLOOD OR OTHER ADVERSE WEATHER CONDITIONS, STRIKES, LOCKOUTS OR OTHER INDUSTRIAL ACTION CONFISCATION OR ANY OTHER ACTION BY GOVERNMENT AGENCIES.

17.2 FORCE MAJEURE SHALL NOT INCLUDE (I) ANY EVENT WHICH IS CAUSED BY THEN NEGLIGENCE OR INTENTIONAL ACTION OF A PARTY OR SUCH PARTY'S EXPERTS, SUB-CONSULTANTS OR AGENTS OR EMPLOYEES, NOR (II) ANY EVENT WHICH A DILIGENT PARTY COULD REASONABLY HAVE BEEN EXPECTED TO BOTH TAKE INTO ACCOUNT AT THE TIME OF THE CONCLUSION OF THIS CONTRACT AND AVOID OR OVERCOME IN THE CARRYING OUT OF ITS OBLIGATIONS HERE UNDER.

17.3 FORCE MAJEURE SHALL NOT INCLUDE IN SUFFICIENCY OF FUNDS OR FAILURE TO MAKE ANY PAYMENT REQUIRED HERE UNDER.

B. NO BREACH OF CONTRACT

17.4 THE FAILURE OF A PARTY TO FULFIL ANY OF ITS OBLIGATIONS HERE UNDER SHALL NOT BE CONSIDERED TO BE A BREACH OF, OR DEFAULT UNDER, THIS CONTRACT IN SO FAR AS SUCH INABILITY ARISES FROM AN EVENT OF FORCE MAJEURE, PROVIDED THAT THE PARTY AFFECTED BY SUCH AN EVENT HAS TAKEN ALL REASONABLE PRECAUTIONS, DUE CARE AND REASONABLE ALTERNATIVE MEASURES, ALL WITH THE OBJECTIVE OF CARRYING OUT THE TERMS AND CONDITIONS OF THIS CONTRACT.

C. MEASURES TO BE TAKEN

17.5 A PARTY AFFECTED BY AN EVENT OF FORCE MAJEURE SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT AS FAR AS IS REASONABLY PRACTICAL AND SHALL TAKE ALL REASONABLE MEASURES TO MINIMIZE THE CONSEQUENCES OF ANY EVENT OF FORCE MAJEURE.

17.6 A PARTY AFFECTED BY AN EVENT OF FORCE MAJEURE SHALL NOTIFY THE OTHER PARTY OF SUCH EVENT AS SOON AS POSSIBLE, AND IN ANY CASE NOT LATER THAN FOURTEEN (14) CALENDAR DAYS FOLLOWING THE OCCURRENCE OF SUCH EVENT, PROVIDING EVIDENCE OF THE NATURE AND CAUSE OF SUCH EVENT, AND SHALL SIMILARLY GIVE WRITTEN NOTICE OF THE RESTORATION OF NORMAL CONDITIONS AS SOON AS POSSIBLE.

17.7 ANY PERIOD WITHIN WHICH A PARTY SHALL, PURSUANT TO THIS CONTRACT, COMPLETE ANY ACTION OR TASK, SHALL BE EXTENDED FOR A PERIOD EQUAL TO THE TIME DURING WHICH SUCH PARTY WAS UNABLE TO PERFORM SUCH ACTION AS A RESULT OF FORCE MAJEURE.

17.8 DURING THE PERIOD OF THEIR INABILITY TO PERFORM THE SERVICES AS A RESULT OF AN EVENT OF FORCE MAJEURE, THE CONSULTANT, UPON INSTRUCTIONS BY THE PROCURING ENTITY, SHALL EITHER:

A DEMOBILIZE, IN WHICH CASE THE CONSULTANT SHALL BE REIMBURSED FOR ADDITIONAL COSTS THEY REASONABLY AND NECESSARILY INCURRED, AND, IF REQUIRED BY THE PROCURING ENTITY, IN REACTIVATING THE SERVICES, OR

B CONTINUE WITH THE SERVICES TO THE EXTENT REASONABLY POSSIBLE, IN WHICH CASE THE CONSULTANT SHALL CONTINUE TO BE PAID UNDER THE TERMS OF THIS CONTRACT AND BE REIMBURSED FOR ADDITIONAL COSTS REASONABLY AND NECESSARILY INCURRED.

17.9 IN THE CASE OF DISAGREEMENT BETWEEN THE PARTIES AS TO THE EXISTENCE OR EXTENT OF FORCE MAJEURE, THE MATTER SHALL BE SETTLED ACCORDING TO CLAUSES GCC 48 & 49.

18. SUSPENSION

18.1 THE PROCURING ENTITY MAY, BY WRITTEN NOTICE OF SUSPENSION TO THE CONSULTANT, SUSPEND ALL PAYMENTS TO THE CONSULTANT HERE UNDER IF THE CONSULTANT FAILS TO PER FOR MANY OF ITS OBLIGATIONS UNDER THIS CONTRACT, INCLUDING THE CARRYING OUT OF THE SERVICES, PROVIDED THAT SUCH NOTICE OF SUSPENSION (I) SHALL SPECIFY THE NATURE OF THE FAILURE, AND (II) SHALL REQUEST THE CONSULTANT TO REMEDY SUCH FAILURE WITHIN A PERIOD NOT EXCEEDING THIRTY (30) CALENDAR DAYS AFTER RECEIPT BY THE CONSULTANT OF SUCH NOTICE OF SUSPENSION.

19. TERMINATION

19.1 THIS CONTRACT MAY BE TERMINATED BY EITHER PARTY AS PER PROVISIONS SETUP BELOW:

A. BY THE PROCURING ENTITY

19.1.1 THE PROCURING ENTITY MAY TERMINATE THIS CONTRACT IN CASE OF THE OCCURRENCE OF ANY OF THE EVENTS SPECIFIED IN PARAGRAPHS (A) THROUGH (F) OF THIS CLAUSE. IN SUCH AN OCCURRENCE, THE PROCURING ENTITY SHALL GIVE AT LEAST THIRTY (30) CALENDAR DAYS' WRITTEN NOTICE OF TERMINATION TO THE CONSULTANT IN CASE OF THE EVENTS REFERRED TO IN (A) THROUGH (D); AT LEAST SIXTY (60) CALENDAR DAYS' WRITTEN NOTICE IN CASE OF THE EVENT REFERRED TO IN (E); AND AT LEAST FIVE (5) CALENDAR DAYS' WRITTEN NOTICE IN CASE OF THE EVENT REFERRED TO IN (F):

A IF THE CONSULTANT FAILS TO REMEDY A FAILURE IN THE PERFORMANCE OF ITS OBLIGATIONS HERE UNDER, AS SPECIFIED IN A NOTICE OF SUSPENSION PURSUANT TO CLAUSE GCC 18;

B IF THE CONSULTANT BECOMES (OR, IF THE CONSULTANT CONSISTS OF MORE THAN ONE ENTITY, IF ANY OF ITS MEMBERS BECOMES) INSOLVENT OR BANKRUPT OR ENTER INTO ANY AGREEMENTS WITH THEIR CREDITORS FOR RELIEF OF DEBT OR TAKE ADVANTAGE OF ANY LAW FOR THE BENEFIT OF DEBTORS OR GO INTO LIQUIDATION OR RECEIVERSHIP WHETHER COMPULSORY OR VOLUNTARY.

C IF THE CONSULTANT FAILS TO COMPLY WITH ANY FINAL DECISION REACHED AS A RESULT OF ARBITRATION PROCEEDINGS PURSUANT TO CLAUSE GCC 48.1;

D IF, AS THE RESULT OF FORCE MAJEURE, THE CONSULTANT IS UNABLE TO PERFORM A MATERIAL PORTION OF THE SERVICES FOR A PERIOD OF NOT LESS THAN SIXTY (60) CALENDAR DAYS.

E IF THE PROCURING ENTITY, IN ITS SOLE DISCRETION AND FOR ANY REASON WHATSOEVER, DECIDES TO TERMINATE THIS CONTRACT.

F IF THE CONSULTANT FAILS TO CONFIRM AVAILABILITY OF KEY EXPERTS AS REQUIRED IN CLAUSE GCC 13.

19.1.2 FURTHERMORE, IF THE PROCURING ENTITY DETERMINES THAT THE CONSULTANT HAS ENGAGED IN CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE [OR OBSTRUCTIVE] PRACTICES, IN COMPETING FOR OR IN EXECUTING THE CONTRACT, THEN THE PROCURING ENTITY MAY, AFTER GIVING FOURTEEN (14) CALENDAR DAYS WRITTEN NOTICE TO THE CONSULTANT, TERMINATE THE CONSULTANT'S EMPLOYMENT UNDER THE CONTRACT.

B. BY THE CONSULTANT

19.1.3 THE CONSULTANT MAY TERMINATE THIS CONTRACT, BY NOT LESS THAN THIRTY (30) CALENDAR DAYS' WRITTEN NOTICE TO THE PROCURING ENTITY, IN CASE OF THE OCCURRENCE OF ANY OF THE EVENTS SPECIFIED IN PARAGRAPHS (A) THROUGH (D) OF THIS CLAUSE.

A IF THE PROCURING ENTITY FAILS TO PAY ANY MONEY DUE TO THE CONSULTANT PURSUANT TO THIS CONTRACT AND NOT SUBJECT TO DISPUTE PURSUANT TO CLAUSES GCC 48.1 WITHIN FORTY-FIVE (45) CALENDAR DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE CONSULTANT THAT SUCH PAYMENT IS OVERDUE.

B IF, AS THE RESULT OF FORCE MAJEURE, THE CONSULTANT IS UNABLE TO PERFORM A MATERIAL PORTION OF THE SERVICES FOR A PERIOD OF NOT LESS THAN SIXTY (60) CALENDAR DAYS.

C IF THE PROCURING ENTITY FAILS TO COMPLY WITH ANY FINAL DECISION REACHED AS A RESULT OF ARBITRATION PURSUANT TO CLAUSE GCC 49.1.

D IF THE PROCURING ENTITY IS IN MATERIAL BREACH OF ITS OBLIGATIONS PURSUANT TO THIS CONTRACT AND HAS NOT REMEDIED THE SAME WITHIN FORTY-FIVE (45) DAYS (OR SUCH LONGER PERIOD AS THE CONSULTANT MAY HAVE SUBSEQUENTLY APPROVED IN WRITING) FOLLOWING THE RECEIPT BY THE PROCURING ENTITY OF THE CONSULTANT'S NOTICE SPECIFYING SUCH BREACH.

C. CESSATION OF RIGHTS AND OBLIGATIONS

19.1.4 UPON TERMINATION OF THIS CONTRACT PURSUANT TO CLAUSES GCC 12 OR GCC 19 HEREOF, OR UPON EXPIRATION OF THIS CONTRACT PURSUANT TO CLAUSE GCC 14, ALL RIGHTS AND OBLIGATIONS OF THE PARTIES HERE UNDER SHALL CEASE, EXCEPT (I) SUCH RIGHTS AND OBLIGATIONS AS MAY HAVE ACCRUED ON THE DATE OF TERMINATION OR EXPIRATION, (II) THE OBLIGATION OF CONFIDENTIALITY SET FORTH IN CLAUSE GCC 22, (III) THE CONSULTANT'S OBLIGATION TO PERMIT INSPECTION, COPYING AND AUDITING OF THEIR ACCOUNTS AND RECORDS SET FORTH IN CLAUSE GCC 25, AND (IV) ANY RIGHT WHICH A PARTY MAY HAVE UNDER THE APPLICABLE LAW.

D. CESSATION OF SERVICES

19.1.5 UPON TERMINATION OF THIS CONTRACT BY NOTICE OF EITHER PARTY TO THE OTHER PURSUANT TO CLAUSES GCC 19A OR GCC 19B, THE CONSULTANT SHALL, IMMEDIATELY UPON DISPATCH OR RECEIPT OF SUCH NOTICE, TAKE ALL NECESSARY STEPS TO BRING THE SERVICES TO A CLOSE IN A PROMPT AND ORDERLY MANNER AND SHALL MAKE EVERY REASONABLE EFFORT TO KEEP EXPENDITURES FOR THIS PURPOSE TO A MINIMUM. WITH RESPECT TO DOCUMENTS PREPARED BY THE CONSULTANT AND EQUIPMENT AND MATERIALS FURNISHED BY THE PROCURING ENTITY, THE CONSULTANT SHALL PROCEED AS PROVIDED, RESPECTIVELY, BY CLAUSES GCC 27 OR GCC 28.

E. PAYMENT UPON TERMINATION

19.1.6 UPON TERMINATION OF THIS CONTRACT, THE PROCURING ENTITY SHALL MAKE THE FOLLOWING PAYMENTS TO THE CONSULTANT:

A REMUNERATION FOR SERVICES SATISFACTORILY PERFORMED PRIOR TO THE EFFECTIVE DATE OF TERMINATION, AND REIMBURSABLE EXPENDITURES FOR EXPENDITURES ACTUALLY INCURRED PRIOR TO THE EFFECTIVE DATE OF TERMINATION; AND PURSUANT TO CLAUSE 42;

B IN THE CASE OF TERMINATION PURSUANT TO PARAGRAPHS (D) AND (E) OF CLAUSE GCC 19.1.1, REIMBURSEMENT OF ANY REASONABLE COST INCIDENTAL TO THE PROMPT AND ORDERLY TERMINATION OF THIS CONTRACT, INCLUDING THE COST OF THE RETURN TRAVEL OF THE EXPERTS.

B. OBLIGATIONS OF THE CONSULTANT

20. GENERAL

A. STANDARD OF PERFORMANCE

20.1 THE CONSULTANT SHALL PERFORM THE SERVICES AND CARRY OUT THE SERVICES WITH ALL DUE DILIGENCE, EFFICIENCY AND ECONOMY, IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL STANDARDS AND PRACTICES, AND SHALL OBSERVE SOUND MANAGEMENT PRACTICES, AND EMPLOY APPROPRIATE TECHNOLOGY AND SAFE AND EFFECTIVE EQUIPMENT, MACHINERY, MATERIALS AND METHODS. THE CONSULTANT SHALL ALWAYS ACT, IN RESPECT OF ANY MATTER RELATING TO THIS CONTRACT OR TO THE SERVICES, AS A FAITHFUL ADVISER TO THE PROCURING ENTITY, AND SHALL AT ALL TIMES SUPPORT AND SAFEGUARD THE PROCURING ENTITY'S LEGITIMATE INTERESTS IN ANY DEALINGS WITH THE THIRD PARTIES.

20.2 THE CONSULTANT SHALL EMPLOY AND PROVIDE SUCH QUALIFIED AND EXPERIENCED EXPERTS AND SUB-CONSULTANTS AS ARE REQUIRED TO CARRY OUT THE SERVICES.

20.3 THE CONSULTANT MAY SUBCONTRACT PART OF THE SERVICES TO AN EXTENT AND WITH SUCH KEY EXPERTS AND SUB- CONSULTANTS AS MAY BE APPROVED IN ADVANCE BY THE PROCURING ENTITY. NOTWITHSTANDING SUCH APPROVAL, THE CONSULTANT SHALL RETAIN FULL RESPONSIBILITY FOR THE SERVICES.

B. LAW APPLICABLE TO SERVICES

20.4 THE CONSULTANT SHALL PERFORM THE SERVICES IN ACCORDANCE WITH THE CONTRACT AND THE APPLICABLE LAW AND SHALL TAKE ALL PRACTICABLE STEPS TO ENSURE THAT ANY OF ITS EXPERTS AND SUB-CONSULTANTS, COMPLY WITH THE APPLICABLE LAW.

20.5 THROUGHOUT THE EXECUTION OF THE CONTRACT, THE CONSULTANT SHALL COMPLY WITH THE IMPORT OF GOODS AND SERVICES PROHIBITIONS IN KENYA WHEN

A AS A MATTER OF LAW OR OFFICIAL REGULATIONS, KENYA PROHIBITS COMMERCIAL RELATIONS WITH THAT COUNTRY; OR

B BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS,

20.6 THE PROCURING ENTITY SHALL NOTIFY THE CONSULTANT IN WRITING OF RELEVANT LOCAL CUSTOMS, AND THE CONSULTANT SHALL, AFTER SUCH NOTIFICATION, RESPECT SUCH CUSTOMS.

21. CONFLICT OF INTERESTS

21.1 THE CONSULTANT SHALL HOLD THE PROCURING ENTITY'S INTEREST'S PARAMOUNT, WITHOUT ANY CONSIDERATION FOR FUTURE WORK, AND STRICTLY AVOID CONFLICT WITH OTHER ASSIGNMENTS OR THEIR OWN CORPORATE INTERESTS.

A. CONSULTANT NOT TO BENEFIT FROM COMMISSIONS, DISCOUNTS, ETC.

21.1.1 THE PAYMENT OF THE CONSULTANT PURSUANT TO GCC F (CLAUSES GCC 41 THROUGH 46) SHALL CONSTITUTE THE CONSULTANT'S ONLY PAYMENT IN CONNECTION WITH THIS CONTRACT AND, SUBJECT TO CLAUSE GCC 21.1.3, THE CONSULTANT SHALL NOT ACCEPT FOR ITS OWN BENEFIT ANY TRADE COMMISSION, DISCOUNT OR SIMILAR PAYMENT IN CONNECTION WITH ACTIVITIES PURSUANT TO THIS CONTRACT OR IN THE DISCHARGE OF ITS OBLIGATIONS HERE UNDER, AND THE CONSULTANT SHALL USE ITS BEST EFFORTS TO ENSURE THAT ANY SUB-CONSULTANTS, AS WELL AS THE EXPERTS AND AGENTS OF EITHER OF THEM, SIMILARLY SHALL NOT RECEIVE ANY SUCH ADDITIONAL PAYMENT.

21.1.2 FURTHERMORE, IF THE CONSULTANT, AS PART OF THE SERVICES, HAS THE RESPONSIBILITY OF ADVISING THE PROCURING ENTITY ON THE PROCUREMENT OF GOODS, WORKS OR SERVICES, SHALL AT ALL TIMES EXERCISE SUCH RESPONSIBILITY IN THE BEST INTEREST OF THE PROCURING ENTITY. ANY DISCOUNTS OR COMMISSIONS OBTAINED BY THE CONSULTANT IN THE EXERCISE OF SUCH PROCUREMENTRESPONSIBILITYSHALLBEFORTHEACCOUNTOFTHEPROCURINGENTITY.

B. CONSULTANT AND AFFILIATES NOT TO ENGAGE IN CERTAIN ACTIVITIES

21.1.3 THE CONSULTANT AGREES THAT, DURING THE TERM OF THIS CONTRACT AND AFTER ITS TERMINATION, THE CONSULTANT AND ANY ENTITY AFFILIATED WITH THE CONSULTANT, AS WELL AS ANY SUB-CONSULTANTS AND ANY ENTITY AFFILIATED WITH SUCH SUB- CONSULTANTS, SHALL BE DISQUALIFIED FROM PROVIDING GOODS, WORKS OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLYRELATEDTOTHECONSULTANT'SSERVICESFORTHEPREPARATIONORIMPLEMENTATIONOFTHEPROJECT.

C. PROHIBITION OF CONFLICTING ACTIVITIES

21.1.4 THE CONSULTANT SHALL NOT ENGAGE AND SHALL CAUSE ITS EXPERTS AS WELL AS ITS SUB-CONSULTANTS NOT TO ENGAGE, EITHER DIRECTLY OR INDIRECTLY, IN ANY BUSINESS OR PROFESSIONAL ACTIVITIES THAT WOULD CONFLICT WITH THE ACTIVITIES ASSIGNED TO THEM UNDER THIS CONTRACT.

D. STRICT DUTY TO DISCLOSE CONFLICTING ACTIVITIES

21.1.5 THE CONSULTANT HAS AN OBLIGATION AND SHALL ENSURE THAT ITS EXPERTS AND SUB-CONSULTANTS SHALL HAVE AN OBLIGATION TO DISCLOSE ANY SITUATION OF ACTUAL OR POTENTIAL CONFLICT THAT IMPACTS THEIR CAPACITY TO SERVE THE BEST INTEREST OF THEIR PROCURING ENTITY, OR THAT MAY REASONABLY BE PERCEIVED AS HAVING THIS EFFECT. FAILURE TO DISCLOSE SAID SITUATIONS MAY LEAD TO THE DISQUALIFICATION OF THE CONSULTANT OR THE TERMINATION OF ITS CONTRACT.

22. CONFIDENTIALITY

22.1 EXCEPT WITH THE PRIOR WRITTEN CONSENT OF THE PROCURING ENTITY, THE CONSULTANT AND THE EXPERTS SHALL NOT AT ANY TIMECOMMUNICATETOANYPERSONORENTITYANYCONFIDENTIALINFORMATIONACQUIREDINTHECOURSEOFTHESERVICES, NOR SHALL THE CONSULTANT AND THE EXPERTS MAKE PUBLIC THE RECOMMENDATIONS FORMULATED IN THE COURSE OF, OR BECAUSE OF, THE SERVICES.

23. LIABILITY OF THE CONSULTANT

23.1 SUBJECT TO ADDITIONAL PROVISIONS, IF ANY, SET FORTH IN THE **SCC,** THE CONSULTANT'S LIABILITY UNDER THIS CONTRACT SHALL BE AS DETERMINED UNDER THE APPLICABLE LAW.

24. INSURANCE TO BE TAKEN OUT BY THE CONSULTANT

24.1 THE CONSULTANT (I) SHALL TAKEOUT AND MAINTAIN AND SHALL CAUSE ANY SUB-CONSULTANTS TO TAKEOUT AND MAINTAIN, AT ITS (OR THE SUB-CONSULTANTS', AS THE CASE MAY BE) OWN COST BUT ON TERMS AND CONDITIONS APPROVED BY THE PROCURING ENTITY, INSURANCE AGAINST THE RISKS, AND FOR THE COVERAGE SPECIFIED IN THE **SCC**, AND (II) AT THE PROCURING ENTITY'S REQUEST, SHALL PROVIDE EVIDENCE TO THE PROCURING ENTITY SHOWING THAT SUCH INSURANCE HAS BEEN TAKEN OUT AND MAINTAINED AND THAT THE CURRENT PREMIUMS THEREFORE HAVE BEEN PAID. THE CONSULTANT SHALL ENSURE THAT SUCH INSURANCE IS IN PLACE PRIOR TO COMMENCING THE SERVICES AS STATED IN CLAUSE GCC 13.

25. ACCOUNTING, INSPECTION AND AUDITING

25.1 THE CONSULTANTSHALLKEEPANDSHALLMAKEALLREASONABLEEFFORTSTOCAUSEITSSUB-CONSULTANTSTOKEEP, ACCURATE AND SYSTEMATIC ACCOUNTS AND RECORDS IN RESPECT OF THE SERVICES AND IN SUCH FORM AND DETAIL AS WILL CLEARLY IDENTIFY RELEVANT TIME CHANGES AND COSTS.

25.2. THE CONSULTANT SHALL PERMIT AND SHALL CAUSE ITS SUB-CONSULTANTS TO PERMIT, THE PPRA AND/OR PERSONS APPOINTED BY THE PPRA TO INSPECT THE SITE AND /OR ALL ACCOUNTS AND RECORDS RELATING TO THE PERFORMANCE OF THE CONTRACT AND THE SUBMISSION OF THE PROPOSAL TO PROVIDE THE SERVICES, AND TO HAVE SUCH ACCOUNTS AND RECORDS AUDITED BY AUDITORS APPOINTED BY THE PPRA IF REQUESTED BY THE PPRA. THE CONSULTANT'S ATTENTION IS DRAWN TO CLAUSE GCC10WHICH PROVIDES, INTERLAID, THAT ACTS INTENDED TO MATERIALLY IMPEDE THE EXERCISE OF THE PPRA'S INSPECTION AND AUDIT RIGHTS PROVIDED FOR UNDER THIS CLAUSE GCC25.2 CONSTITUTE A PROHIBITED PRACTICE SUBJECT TO CONTRACT TERMINATION (AS WELL AS TO A DETERMINATION OF IN ELIGIBILITY UNDER THE PPRA'S PREVAILING SANCTIONS PROCEDURES).

26. REPORTING OBLIGATIONS

26.1 THE CONSULTANT SHALL SUBMIT TO THE PROCURING ENTITY THE REPORTS AND DOCUMENTS SPECIFIED IN APPENDIX A, IN THE FORM, IN THE NUMBERS AND WITHIN THE TIME PERIODS SET FORTH IN THE SAID APPENDIX.

27. PROPRIETARY RIGHTS OF THE PROCURING ENTITY IN REPORTS AND RECORDS

27.1 UNLESS OTHERWISE INDICATED IN THE **SCC**, ALL REPORTS AND RELEVANT DATA AND INFORMATION SUCH AS MAPS, DIAGRAMS, PLANS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, SUPPORTING RECORDS OR MATERIAL COMPILED OR PREPARED BY THE CONSULTANT FOR THE PROCURING ENTITY IN THE COURSE OF THE SERVICES SHALL BE CONFIDENTIAL AND BECOME AND REMAIN THE ABSOLUTE PROPERTY OF THE PROCURING ENTITY. THE CONSULTANT SHALL, NOT LATER THAN UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, DELIVER ALL SUCH DOCUMENTS TO THE PROCURING ENTITY, TOGETHER WITH A DETAILED INVENTORY THEREOF. THE CONSULTANT MAY RETAIN A COPY OF SUCH DOCUMENTS, DATA AND/OR SOFTWARE BUT SHALL NOT USE THE SAME FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT PRIOR WRITTEN APPROVAL OF THE PROCURING ENTITY.

27.2 IF LICENSE AGREEMENTS ARE NECESSARY OR APPROPRIATE BETWEEN THE CONSULTANT AND THIRD PARTIES FOR PURPOSES OF DEVELOPMENT OF THE PLANS, DRAWINGS, SPECIFICATIONS, DESIGNS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, THE CONSULTANT SHALL OBTAIN THE PROCURING ENTITY'S PRIOR WRITTEN APPROVAL TO SUCH AGREEMENTS, AND THE PROCURING ENTITY SHALL BE ENTITLED AT ITS DISCRETION TO REQUIRE RECOVERING THE EXPENSES RELATED TO THE DEVELOPMENT OF THE PROGRAM(S) CONCERNED. OTHER RESTRICTIONS ABOUT THE FUTURE USE OF THESE DOCUMENTS AND SOFTWARE, IF ANY, SHALL BE SPECIFIED IN THE **SCC**.

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28. EQUIPMENT, VEHICLES AND MATERIALS

28.1 EQUIPMENT, VEHICLES AND MATERIALS MADE AVAILABLE TO THE CONSULTANT BY THE PROCURING ENTITY OR PURCHASED BY THE CONSULTANT WHOLLY OR PARTLY WITH FUNDS PROVIDED BY THE PROCURING ENTITY, SHALL BE THE PROPERTY OF THE PROCURING ENTITY AND SHALL BE MARKED ACCORDINGLY. UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, THE CONSULTANT SHALL MAKE AVAILABLE TO THE PROCURING ENTITY AN INVENTORY OF SUCH EQUIPMENT, VEHICLES AND MATERIALS AND SHALL DISPOSE OF SUCH EQUIPMENT, VEHICLES AND MATERIALS IN ACCORDANCE WITH THE PROCURING ENTITY'S INSTRUCTIONS. WHILE IN POSSESSION OF SUCH EQUIPMENT, VEHICLES AND MATERIALS, THE CONSULTANT, UNLESS OTHERWISE INSTRUCTED BY THE PROCURING ENTITY IN WRITING, SHALL INSURE THE MAT THE EXPENSE OF THE PROCURING ENTITY IN AN AMOUNT EQUAL TO THEIR FULL REPLACEMENT VALUE.

28.2 ANY EQUIPMENT OR MATERIALS BROUGHT BY THE CONSULTANT OR ITS EXPERTS INTO, AS APPLICABLE.

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C. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

29.DESCRIPTION OF KEY EXPERTS

29.1 THE TITLE, AGREED JOB DESCRIPTION, MINIMUM QUALIFICATION AND TIME-INPUT ESTIMATES TO CARRY OUT THE SERVICES OF EACH OF THE CONSULTANT'S KEY EXPERTS ARE DESCRIBED IN APPENDIX B.

29.2 IF REQUIRED TO COMPLY WITH THE PROVISIONS OF CLAUSE GCC 20 A, ADJUSTMENTS WITH RESPECT TO THE ESTIMATED TIME- INPUT OF KEY EXPERTS SET FORTH IN APPENDIX B MAY BE MADE BY THE CONSULTANT BY A WRITTEN NOTICE TO THE PROCURING ENTITY, PROVIDED (I) THAT SUCH ADJUSTMENTS SHALL NOT ALTER THE ORIGINAL TIME-INPUT ESTIMATES FOR ANY INDIVIDUAL BY MORE THAN 10% OR ONE WEEK, WHICHEVER IS LARGER; AND (II)THAT THE AGGREGATE OF SUCH ADJUSTMENTS SHALL NOT CAUSE PAYMENTS UNDER THIS CONTRACT TO EXCEED THE CEILINGS SET FORTH IN CLAUSE GCC41.2.

29.3 IF ADDITIONAL WORK IS REQUIRED BEYOND THE SCOPE OF THE SERVICES SPECIFIED IN APPENDIX A, THE ESTIMATED TIME-INPUT FOR THE KEY EXPERTS MAY BE INCREASED BY AGREEMENT IN WRITING BETWEEN THE PROCURING ENTITY AND THE CONSULTANT. IN CASE WHERE PAYMENTS UNDER THIS CONTRACT EXCEED THE CEILINGS SET FORTH IN CLAUSE GCC41. 1, THE PARTIES SHALL SIGN A CONTRACT AMENDMENT.

30. REPLACEMENT OF KEY EXPERTS

30.1 EXCEPT AS THE PROCURING ENTITY MAY OTHERWISE AGREE IN WRITING, NO CHANGES SHALL BE MADE IN THE KEY EXPERTS.

30.2 NOTWITHSTANDING THE ABOVE, THE SUBSTITUTION OF KEY EXPERTS DURING CONTRACT EXECUTION MAY BE CONSIDERED ONLY BASED ON THE CONSULTANT'S WRITTEN REQUEST AND DUE TO CIRCUMSTANCES OUTSIDE THE REASONABLE CONTROL OF THE CONSULTANT, INCLUDING BUT NOT LIMITED TO DEATH OR MEDICAL IN CAPACITY. IN SUCH CASE, THE CONSULTANT SHALL FORTH WITH PROVIDE AS ARE PLACEMENT, A PERSON OF EQUIVALENT OR BETTER QUALIFICATIONS AND EXPERIENCE, AND AT THE SAME RATE OF REMUNERATION.

31. APPROVAL OF ADDITIONAL KEY EXPERTS

31.1 IF DURING EXECUTION OF THE CONTRACT, ADDITIONAL KEY EXPERTS ARE REQUIRED TO CARRY OUT THE SERVICES, THE CONSULTANT SHALL SUBMIT TO THE PROCURING ENTITY FOR REVIEW AND APPROVAL A COPY OF THEIR CURRICULA VITAE (CVS). IF THE PROCURING ENTITY DOES NOT OBJECT IN WRITING (STATING THE REASONS FOR THE OBJECTION) WITHIN TWENTY-TWO (22) DAYS FROM THE DATE OF RECEIPT OF SUCH CVS, SUCH ADDITIONAL KEY EXPERTS SHALL BE DEEMED TO HAVE BEEN APPROVED BY THE PROCURING ENTITY.

32. REMOVAL OF EXPERTS OR SUB-CONSULTANTS

32.1 IF THE PROCURING ENTITY FINDS THAT ANY OF THE EXPERTS OR SUB-CONSULTANT HAS COMMITTED SERIOUS MISCONDUCT OR HAS BEEN CHARGED WITH HAVING COMMITTED A CRIMINAL ACTION OR SHALL THE PROCURING ENTITY DETERMINE THAT CONSULTANT'S EXPERT OR SUB-CONSULTANT HAS ENGAGED IN CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE, OR OBSTRUCTIVE PRACTICE WHILE PERFORMING THE SERVICES, THE CONSULTANT SHALL, AT THE PROCURING ENTITY'S WRITTEN REQUEST, PROVIDE A REPLACEMENT.

32.2 IN THE EVENT THAT ANY OF KEY EXPERTS, NON-KEY EXPERTS OR SUB-CONSULTANTS IS FOUND BY THE PROCURING ENTITY TO BE IN COMPETENT OR IN CAPABLE IN DISCHARGING ASSIGNED DUTIES, THE PROCURING ENTITY, SPECIFYING THE GROUNDS, THEREFORE, MAY REQUEST THE CONSULTANT TO PROVIDE A REPLACEMENT.

32.3 ANY REPLACEMENT OF THE REMOVED EXPERTS OR SUB-CONSULTANTS SHALL POSSESS BETTER QUALIFICATIONS AND EXPERIENCE AND SHALL BE ACCEPTABLE TO THE PROCURING ENTITY.

33. REPLACEMENT/ REMOVAL OF EXPERTS–IMPACT ON PAYMENTS

33.1 EXCEPT AS THE PROCURING ENTITY MAY OTHERWISE AGREE, (I) THE CONSULTANT SHALL BEAR ALL ADDITIONAL TRAVEL AND OTHER COSTS ARISING OUT OF OR INCIDENTAL TO ANY REMOVAL AND/OR REPLACEMENT, AND (II) THE REMUNERATION TO BE PAID FOR ANY OF THE EXPERTS PROVIDED AS A REPLACEMENT SHALL NOT EXCEED THE REMUNERATION WHICH WOULD HAVE BEEN PAYABLE TO THE EXPERTS REPLACED OR REMOVED.

34. WORKING HOURS, OVERTIME, LEAVE, ETC.

34.1 WORKING HOURS AND HOLIDAYS FOR EXPERTS A RESET FORTH IN APPENDIX B. TO ACCOUNT FOR TRAVEL TIME TO/FROM KENYA, EXPERTS CARRYING OUT SERVICES INSIDE KENYA SHALL BE DEEMED TO HAVE COMMENCED OR FINISHED WORK IN RESPECT OF THE SERVICES SUCH NUMBER OF DAYS BEFORE THEIR ARRIVAL IN, OR AFTER THEIR DEPARTURE FROM, KENYA AS IS SPECIFIED IN APPENDIX B.

34.2 THE EXPERTS SHALL NOT BE ENTITLED TO BE PAID FOR OVERTIME NOR TO TAKE PAID SICK LEAVE OR VACATION LEAVE EXCEPT AS SPECIFIED IN APPENDIX B, AND THE CONSULTANT'S REMUNERATION SHALL BE DEEMED TO COVER THESE ITEMS.

34.3 ANY TAKING OF LEAVE BY KEY EXPERTS SHALL BE SUBJECT TO THE PRIOR APPROVAL BY THE CONSULTANT WHO SHALL ENSURE THAT ABSENCE FOR LEAVE PURPOSES WILL NOT DELAY THE PROGRESS AND OR IMPACT ADEQUATE SUPERVISION OF THE SERVICES.

D. OBLIGATIONS OF THE PROCURING ENTITY

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35. ASSISTANCE AND EXEMPTIONS

35.1 UNLESS OTHERWISE SPECIFIED IN THE **SCC**, THE PROCURING ENTITY SHALL USE ITS BEST EFFORTS TO:

A ASSIST THE CONSULTANT WITH OBTAINING WORK PERMITS AND SUCH OTHER DOCUMENTS AS SHALL BE NECESSARY TO ENABLE THE CONSULTANT TO PERFORM THE SERVICES.

B ASSIST THE CONSULTANT WITH PROMPTLY OBTAINING, FOR THE EXPERTS AND, IF APPROPRIATE, THEIR ELIGIBLE DEPENDENTS, ALL NECESSARY ENTRY AND EXIT VISAS, RESIDENCE PERMITS, EXCHANGE PERMITS, AND ANY OTHER DOCUMENTS REQUIRED FOR THEIR STAY IN KENYA WHILE CARRYING OUT THE SERVICES UNDER THE CONTRACT.

C FACILITATE PROMPT CLEARANCE THROUGH CUSTOMS OF ANY PROPERTY REQUIRED FOR THE SERVICES AND OF THE PERSONAL EFFECTS OF THE EXPERTS AND THEIR ELIGIBLE DEPENDENTS.

D ISSUE TO OFFICIALS, AGENTS AND REPRESENTATIVES OF THE GOVERNMENT ALL SUCH INSTRUCTIONS AND INFORMATION AS MAY BE NECESSARY OR APPROPRIATE FOR THE PROMPT AND EFFECTIVE IMPLEMENTATION OF THE SERVICES.

E ASSIST THE CONSULTANT AND THE EXPERTS AND ANY SUB-CONSULTANTS EMPLOYED BY THE CONSULTANT FOR THE SERVICES WITH OBTAINING EXEMPTION FROM ANY REQUIREMENT TO REGISTER OR OBTAIN ANY PERMIT TO PRACTICE THEIR PROFESSION OR TO ESTABLISH THEMSELVES EITHER INDIVIDUALLY OR AS A CORPORATE ENTITY IN KENYA ACCORDING TO THE APPLICABLE LAW IN KENYA.

F ASSIST THE CONSULTANT, ANY SUB-CONSULTANTS AND THE EXPERTS OF EITHER OF THEM WITH OBTAINING THE PRIVILEGE, PURSUANT TO THE APPLICABLE LAW IN KENYA, OF BRINGING INTO KENYA REASONABLE AMOUNTS OF FOREIGN CURRENCY FOR THE PURPOSES OF THE SERVICES OR FOR THE PERSONAL USE OF THE EXPERTS AND OF WITHDRAWING ANY SUCH AMOUNTS AS MAY BE EARNED THERE IN BY THE EXPERTS IN THE EXECUTION OF THE SERVICES.

G PROVIDE TO THE CONSULTANT ANY SUCH OTHER ASSISTANCE AS MAY BE SPECIFIED IN THE **SCC.**

36. ACCESS TO PROJECT SITE

36.1 THE PROCURING ENTITY WARRANTS THAT THE CONSULTANT SHALL HAVE, FREE OF CHARGE, UNIMPEDED ACCESS TO THE PROJECT SITE IN RESPECT OF WHICH ACCESS IS REQUIRED FOR THE PERFORMANCE OF THE SERVICES. THE PROCURING ENTITY WILL BE RESPONSIBLE FOR ANY DAMAGE TO THE PROJECT SITE, OR ANY PROPERTY THEREON RESULTING FROM SUCH ACCESS AND WILL INDEMNIFY THE CONSULTANT AND EACH OF THE EXPERTS IN RESPECT OF LIABILITY FOR ANY SUCH DAMAGE, UNLESS SUCH DAMAGE ISCAUSEDBYTHEWILLFULDEFAULTORNEGLIGENCEOFTHECONSULTANTORANYSUB-CONSULTANTSORTHEEXPERTSOFEITHEROF THEM.

37. CHANGE IN THE APPLICABLE LAW RELATED TO TAXES AND DUTIES

37.1 IF, AFTER THE DATE OF THIS CONTRACT, THERE IS ANY CHANGE IN THE APPLICABLE LAW IN KENYA WITH RESPECT TO TAXES AND DUTIES WHICH INCREASES OR DECREASES THE COST INCURRED BY THE CONSULTANT IN PERFORMING THE SERVICES, THEN THE REMUNERATION AND REIMBURSABLE EXPENSES OTHERWISE PAYABLE TO THE CONSULTANT UNDER THIS CONTRACT SHALL BE INCREASED OR DECREASED ACCORDINGLY BY AGREEMENT BETWEEN THE PARTIES HERETO, AND CORRESPONDING ADJUSTMENTS SHALL BE MADE TO THE CEILING AMOUNTS SPECIFIED IN CLAUSE GCC41.1

38. SERVICES, FACILITIES AND PROPERTY OF THE PROCURING ENTITY

38.1 THE PROCURING ENTITY SHALL MAKE AVAILABLE TO THE CONSULTANT AND THE EXPERTS, FOR THE PURPOSES OF THE SERVICES AND FREE OF ANY CHARGE, THE SERVICES, FACILITIES AND PROPERTY DESCRIBED IN THE TERMS OF REFERENCE (APPENDIX A) AT THE TIMES AND IN THE MANNER SPECIFIED IN SAID APPENDIX A.

38.2 IN CASE THAT SUCH SERVICES, FACILITIES AND PROPERTY SHALL NOT BE MADE AVAILABLE TO THE CONSULTANT AS AND WHEN SPECIFIED IN APPENDIX A, THE PARTIES SHALL AGREE ON (I) ANY TIME EXTENSION THAT IT MAY BE APPROPRIATE TO GRANT TO THE CONSULTANT FOR THE PERFORMANCE OF THE SERVICES,(II) THE MANNER IN WHICH THE CONSULTANT SHALL PROCURE ANY SUCH SERVICES, FACILITIES AND PROPERTY FROM OTHER SOURCES, AND (III) THE ADDITIONAL PAYMENTS, IF ANY, TO BE MADE TO THE CONSULTANT AS A RESULT THERE OF PURSUANT TO CLAUSE GCC 41.3.

39. COUNTERPART PERSONNEL

39.1 THE PROCURING ENTITY SHALL MAKE AVAILABLE TO THE CONSULTANT FREE OF CHARGE SUCH PROFESSIONAL AND SUPPORT COUNTERPART PERSONNEL, TO BE NOMINATED BY THE PROCURING ENTITY WITH THE CONSULTANT'S ADVICE, IF SPECIFIED IN APPENDIX A.

39.2 IF COUNTERPART PERSONNEL ARE NOT PROVIDED BY THE PROCURING ENTITY TO THE CONSULTANT AS AND WHEN SPECIFIED IN APPENDIX A, THE PROCURING ENTITY AND THE CONSULTANTS HALL AGREE ON (I) HOW THE AFFECTED PART OF THE SERVICES SHALL BE CARRIED OUT, AND (II) THE ADDITIONAL PAYMENTS, IF ANY, TO BE MADE BY THE PROCURING ENTITY TO THE CONSULTANT AS A RESULT THERE OF PURSUANT TO CLAUSE GCC 41.3.

39.3 PROFESSIONAL AND SUPPORT COUNTERPART PERSONNEL, EXCLUDING PROCURING ENTITY'S LIAISON PERSONNEL, SHALL WORK UNDER THE EXCLUSIVE DIRECTION OF THE CONSULTANT. IF ANY MEMBER OF THE COUNTERPART PERSONNEL FAILS TO PERFORM ADEQUATELY ANY WORK ASSIGNED TO SUCH MEMBER BY THE CONSULTANT THAT IS CONSISTENT WITH THE POSITION OCCUPIED BY SUCH MEMBER, THE CONSULTANT MAY REQUEST THE REPLACEMENT OF SUCH MEMBER, AND THE PROCURING ENTITY SHALL NOT UNREASONABLY REFUSE TO ACT UPON SUCH REQUEST.

40. PAYMENT OBLIGATION

40.1 IN CONSIDERATION OF THE SERVICES PERFORMED BY THE CONSULTANT UNDER THIS CONTRACT, THE PROCURING ENTITY SHALL MAKE SUCH PAYMENTS TO THE CONSULTANT AND IN SUCH MANNER AS IS PROVIDED BY GCC BELOW.

E. PAYMENTS TO THE CONSULTANT

41. CEILING AMOUNT

41.1 AN ESTIMATE OF THE COST OF THE SERVICES IS SET FORTH IN APPENDIX C (REMUNERATION) AND APPENDIX D [REIMBURSABLE EXPENSES]).

41.2 PAYMENTS UNDER THIS CONTRACT SHALL NOT EXCEED THE CEILINGS IN FOREIGN CURRENCY AND IN LOCAL CURRENCY SPECIFIED IN THE **SCC.**

41.3 FOR ANY PAYMENTS IN EXCESS OF THE CEILINGS SPECIFIED IN GCC 41.2, AN AMENDMENT TO THE CONTRACT SHALL BE SIGNED BY THE PARTIES REFERRING TO THE PROVISION OF THIS CONTRACT THAT EVOKES SUCH AMENDMENT.

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42. REMUNERATION AND REIMBURSABLE EXPENSES

42.1 THE PROCURING ENTITY SHALL PAY TO THE CONSULTANT

(I)REMUNERATION THAT SHALL BE DETERMINED ON THE BASIS OF TIME ACTUALLY SPENT BY EACH EXPERT IN THE PERFORMANCE OF THE SERVICES AFTER THE DATE OF COMMENCING OF SERVICES OR SUCH OTHER DATE AS THE PARTIES SHALL AGREE IN WRITING; AND

(II) REIMBURSABLE EXPENSES THAT ARE ACTUALLY AND REASONABLY INCURRED BY THE CONSULTANT IN THE PERFORMANCE OF THE SERVICES.

42.2 ALL PAYMENTS SHALL BE AT THE RATES SET FORTH IN APPENDIX C AND APPENDIX D.

42.3 UNLESS THE **SCC** PROVIDES FOR THE PRICE ADJUSTMENT OF THE REMUNERATION RATES, SAID REMUNERATION SHALL BE FIXED FOR THE DURATION OF THE CONTRACT.

42.4 THE REMUNERATION RATES SHALL COVER:

(I)SUCH SALARIES AND ALLOWANCES AS THE CONSULTANT SHALL HAVE AGREED TO PAY TO THE EXPERTS AS WELL AS FACTORS FOR SOCIAL CHARGES AND OVERHEADS (BONUSES OR OTHER MEANS OF PROFIT-SHARING SHALL NOT BE ALLOWED AS AN ELEMENT OF OVERHEADS),

(II) THE COST OF BACKSTOPPING BY HOME OFFICE STAFF NOT INCLUDED IN THE EXPERTS 'LIST IN APPENDIX B,

(III) THE CONSULTANT'S PROFIT, AND

(IV) ANY OTHER ITEMS AS SPECIFIED N THE **SCC.**

42.5 ANY RATES SPECIFIED FOR EXPERTS NOT YET APPOINTED SHALL BE PROVISIONAL AND SHALL BE SUBJECT TO REVISION, WITH THE WRITTEN APPROVAL OF THE PROCURING ENTITY, ONCE THE APPLICABLE REMUNERATION RATES AND ALLOWANCES ARE KNOWN.

43. TAXES AND DUTIES

43.1 THE CONSULTANT, SUB-CONSULTANTS AND EXPERTS ARE RESPONSIBLE FOR MEETING ANY AND ALL TAX LIABILITIES ARISING OUT OF THE CONTRACT UNLESS IT IS STATED OTHERWISE IN **THE SCC.**

44. CURRENCY OF PAYMENT

44.1 ANY PAYMENT UNDER THIS CONTRACT SHALL BE MADE IN THE CURRENCY OR CURRENCIES SPECIFIED IN THE **SCC.**

45. MODE OF BILLING AND PAYMENT

45.1BILLING AND PAYMENTS IN RESPECT OF THE SERVICES SHALL BE MADE AS FOLLOWS:

A) ADVANCE PAYMENT. WITHIN THE NUMBER OF DAYS AFTER THE EFFECTIVE DATE, THE PROCURING ENTITY SHALL PAY TO THE CONSULTANT AN ADVANCE PAYMENT AS SPECIFIED IN THE SCC. UNLESS OTHERWISE INDICATED IN THE **SCC,** AN ADVANCE PAYMENT SHALL BE MADE AGAINST AN ADVANCE PAYMENT BANK GUARANTEE ACCEPTABLE TO THE PROCURING ENTITY IN AN AMOUNT (OR AMOUNTS) AND IN A CURRENCY (OR CURRENCIES) SPECIFIED IN THE **SCC**. SUCH GUARANTEE (I) IS TO REMAIN EFFECTIVE UNTIL THE ADVANCE PAYMENT HAS BEEN FULLY SET OFF, AND (II) IS TO BE IN THE FORM SET FORTH IN APPENDIX E. THE ADVANCE PAYMENTS WILL BE SET OFF BY THE PROCURING ENTITY IN EQUAL INSTALMENTS AGAINST THE STATEMENTS FOR THE NUMBER OF MONTHS OF THE SERVICES SPECIFIED IN THE **SCC** UNTIL SAID ADVANCE PAYMENTS HAVE BEEN FULLY SETOFF.

B) THE ITEMIZED INVOICES. AS SOON AS PRACTICABLE AND NOT LATER THAN FIFTEEN (15) DAYS AFTER THE END OF EACH CALENDAR MONTH DURING THE PERIOD OF THE SERVICES, OR AFTER THE END OF EACH TIME INTERVAL OTHERWISE INDICATED IN THE SCC, THE CONSULTANT SHALL SUBMIT TO THE PROCURING ENTITY, IN DUPLICATE, ITEMIZED INVOICES, ACCOMPANIED BY THE RECEIPTS OR OTHER APPROPRIATE SUPPORTING DOCUMENTS, OF THE AMOUNTS PAYABLE PURSUANT TO CLAUSES GCC 44 AND GCC 45 FOR SUCH INTERVAL, OR ANY OTHER PERIOD INDICATED IN THE **SCC.** SEPARATE INVOICES HALL BE SUBMITTED FOR EXPENSES INCURRED IN FOREIGN CURRENCY AND IN LOCAL CURRENCY. EACH INVOICE SHALL SHOW REMUNERATION AND REIMBURSABLE EXPENSES SEPARATELY.

C) THE PROCURING ENTITY SHALL PAY THE CONSULTANT'S INVOICES WITHIN SIXTY (60) DAYS AFTER THE RECEIPT BY THE PROCURING ENTITY OF SUCH ITEMIZED INVOICES WITH SUPPORTING DOCUMENTS. ONLY SUCH PORTION OF AN INVOICE THAT IS NOT SATISFACTORILY SUPPORTED MAY BE WITHHELD FROM PAYMENT. SHOULD ANY DISCREPANCY BE FOUND TO EXIST BETWEEN ACTUAL PAYMENT AND COSTS AUTHORIZED TO BE INCURRED BY THE CONSULTANT, THE PROCURING ENTITY MAY ADD OR SUBTRACT HE DIFFERENCE FROM ANY SUBSEQUENT PAYMENTS.

DTHE FINAL PAYMENT: THE FINAL PAYMENT UNDER THIS CLAUSE SHALL BE MADE ONLY AFTER THE FINAL REPORT AND A FINAL INVOICE, IDENTIFIED AS SUCH, SHALL HAVE BEEN SUBMITTED BY THE CONSULTANT AND APPROVED AS SATISFACTORY BY THE PROCURING ENTITY. THE SERVICES SHALL BE DEEMED COMPLETED AND FINALLY ACCEPTED BY THE PROCURING ENTITY AND THE FINAL REPORT AND FINAL INVOICE SHALL BE DEEMED APPROVED BY THE PROCURING ENTITY AS SATISFACTORY NINETY (90) CALENDAR DAYS AFTER RECEIPT OF THE FINAL REPORT AND FINAL INVOICE BY THE PROCURING ENTITY UNLESS THE PROCURING ENTITY, WITHIN SUCH NINETY (90) CALENDAR DAY PERIOD, GIVES WRITTEN NOTICE TO THE CONSULTANT SPECIFYING IN DETAIL DEFICIENCIES IN THE SERVICES, THE FINAL REPORT OR FINAL INVOICE. THE CONSULTANT SHALL THEREUPON PROMPTLY MAKE ANY NECESSARY CORRECTIONS, AND THEREAFTER THE FOREGOING PROCESS SHALL BE REPEATED. ANY AMOUNT THAT THE PROCURING ENTITY HAS PAID OR HAS CAUSED TO BE PAID IN ACCORDANCE WITH THIS CLAUSE IN EXCESS OF THE AMOUNTS PAYABLE IN ACCORDANCE WITH THE PROVISIONS OF THIS CONTRACT SHALL BE REIMBURSED BY THE CONSULTANT TO THE PROCURING ENTITY WITHIN THIRTY (30) DAYS AFTER RECEIPT BY THE CONSULTANT OF NOTICE THEREOF. ANY SUCH CLAIM BY THE PROCURING ENTITY FOR REIMBURSEMENT MUST BE MADE WITHIN TWELVE (12) CALENDAR MONTH S AFTER RECEIPT T BY THE PROCURING ENTITY OF A FINAL REPORT AND A FINAL INVOICE APPROVED BY THE PROCURING ENTITY IN ACCORDANCE WITH THE ABOVE.

C) THE PROCURING ENTITY SHALL PAY THE CONSULTANT'S INVOICES WITHIN SIXTY (60) DAYS AFTER THE RECEIPT BY THE PROCURING ENTITY OF SUCH ITEMIZED INVOICES WITH SUPPORTING DOCUMENTS. ONLY SUCH PORTION OF AN INVOICE THAT IS NOT SATISFACTORILY SUPPORTED MAY BE WITHHELD FROM PAYMENT. SHOULD ANY DISCREPANCY BE FOUND TO EXIST BETWEEN ACTUAL PAYMENT AND COSTS AUTHORIZED TO BE INCURRED BY THE CONSULTANT, THE PROCURING ENTITY MAY ADD OR SUBTRACT HE DIFFERENCE FROM ANY SUBSEQUENT PAYMENTS.

D THE FINAL PAYMENT: THE FINAL PAYMENT UNDER THIS CLAUSE SHALL BE MADE ONLY AFTER THE FINAL REPORT AND A FINAL INVOICE, IDENTIFIED AS SUCH, SHALL HAVE BEEN SUBMITTED BY THE CONSULTANT AND APPROVED AS SATISFACTORY BY THE PROCURING ENTITY. THE SERVICES SHALL BE DEEMED COMPLETED AND FINALLY ACCEPTED BY THE PROCURING ENTITY AND THE FINAL REPORT AND FINAL INVOICE SHALL BE DEEMED APPROVED BY THE PROCURING ENTITY AS SATISFACTORY NINETY (90) CALENDAR DAYS AFTER RECEIPT OF THE FINAL REPORT AND FINAL INVOICE BY THE PROCURING ENTITY UNLESS THE PROCURING ENTITY, WITHIN SUCH NINETY (90) CALENDAR DAY PERIOD, GIVES WRITTEN NOTICE TO THE CONSULTANT SPECIFYING IN DETAIL DEFICIENCIES IN THE SERVICES, THE FINAL REPORT OR FINAL INVOICE. THE CONSULTANT SHALL THEREUPON PROMPTLY MAKE ANY NECESSARY CORRECTIONS, AND THEREAFTER THE FOREGOING PROCESS SHALL BE REPEATED. ANY AMOUNT THAT THE PROCURING ENTITY HAS PAID OR HAS CAUSED TO BE PAID IN ACCORDANCE WITH THIS CLAUSE IN EXCESS OF THE AMOUNTS PAYABLE IN ACCORDANCE WITH THE PROVISIONS OF THIS CONTRACT SHALL BE REIMBURSED BY THE CONSULTANT TO THE PROCURING ENTITY WITHIN THIRTY (30) DAYS AFTER RECEIPT BY THE CONSULTANT OF NOTICE THEREOF. ANY SUCH CLAIM BY THE PROCURING ENTITY FOR REIMBURSEMENT MUST BE MADE WITHIN TWELVE (12) CALENDAR MONTH S AFTER RECEIPT T BY THE PROCURING ENTITY OF A FINAL REPORT AND A FINAL INVOICE APPROVED BY THE PROCURING ENTITY IN ACCORDANCE WITH THE ABOVE.

E) ALL PAYMENTS UNDER THIS CONTRACT SHALL BE MADE TO THE ACCOUNTS OF THE CONSULTANT SPECIFIED IN THE **SCC.**

F) WITH THE EXCEPTION OF THE FINAL PAYMENT UNDER (D) ABOVE, PAYMENTS DO NOT CONSTITUTE ACCEPTANCE OF THE SERVICES NOR RELIEVE THE CONSULTANT OF ANY OBLIGATIONS HERE UNDER.

46 INTERESTS ON DELAYED PAYMENTS

46.1 IF THE PROCURING ENTITY HAD DELAYED PAYMENTS BEYOND THIRTY (30) DAYS AFTER THE DUE DATE STATED IN CLAUSE GCC 45.1(C), INTEREST SHALL BE PAID TO THE CONSULTANT ON ANY AMOUNT DUE BY, NOT PAID ON, SUCH DUE DATE FOR EACH DAY OF DELAY AT THE ANNUAL RATE STATED IN THE **SCC.**

F. FAIRNESS AND GOOD FAITH

47 GOOD FAITH

47.1 THE PARTIES UNDERTAKE TO ACT IN GOOD FAITH WITH RESPECT TO EACH OTHER'S RIGHTS UNDER THIS CONTRACT AND TO ADOPT ALL REASONABLE MEASURES TO ENSURE THE REALIZATION OF THE OBJECTIVES OF THIS CONTRACT.

G. SETTLEMENT OF DISPUTES

48 AMICABLE SETTLEMENT

48.1THE PARTIES SHALL SEEK TO RESOLVE ANY DISPUTE AMICABLY BY MUTUAL CONSULTATION.

48.2IF EITHER PARTY OBJECTS TO ANY ACTION OR INACTION OF THE OTHER PARTY, THE OBJECTING PARTY MAY FILE A WRITTEN NOTICE OF DISPUTE TO THE OTHER PARTY PROVIDING IN DETAIL THE BASIS OF THE DISPUTE. THE PARTY RECEIVING THE NOTICE OF DISPUTE WILL CONSIDERATE AND RESPONDS IN WRITING WITHIN FOURTEEN (14) DAYS AFTER RECEIPT. IF THAT PARTY FAILS TO RESPOND WITHIN FOURTEEN (14) DAYS, OR THE DISPUTE CANNOT BE AMICABLY SETTLED WITHIN FOURTEEN (14) DAYS FOLLOWING THE RESPONSE OF THAT PARTY, CLAUSE GCC 49.1 SHALL APPLY.

49 DISPUTE RESOLUTION

49.1 ANY DISPUTE BETWEEN THE PARTIES ARISING UNDER OR RELATED TO THIS CONTRACT THAT CANNOT BE SETTLED AMICABLY MAY BE REFERRED TO BY EITHER PARTY TO THE ADJUDICATION /ARBITRATION IN ACCORDANCE WITH THE PROVISIONS IN THE **SCC.**

DISPUTES SHALL BE SETTLED BY ARBITRATION BY THE NAIROBI CENTRE FOR INTERNATIONAL ARBITRATIONS

SECTION 6: SPECIAL CONDITIONS OF CONTRACT

eGP Kenya
UNUNUZI WA UWAZI

Special Conditions of Contract (SCC)

	GCC Reference & SCC Detail	Filled By	Value to be Auto Populated in Tender Document
GCC Reference	**1.DEFINITIONS** 1.1 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS WHENEVER USED IN THIS CONTRACT HAVE THE FOLLOWING MEANINGS: A) "APPLICABLE LAW" MEANS THE LAWS AND ANY OTHER INSTRUMENTS HAVING HE FORCE OF LAW IN KENYA AS SPECIFIED IN THE SCC.	-	-
SCC Detail	THE CONTRACT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF KENYA ***[WHERE THE PARTIES MAY DESIGNATE THE LAW OF ANOTHER COUNTRY, IN WHICH CASE THE NAME OF THE RESPECTIVE COUNTRY SHOULD BE INSERTED, AND THE NAME OF KENYA SHOULD BE REMOVED.]***	Manual Input	

GCC Reference	**6.COMMUNICATIONS** 6.1 ANY COMMUNICATION REQUIRED OR PERMITTED TO BE GIVEN OR MADE PURSUANT TO THIS CONTRACT SHALL BE IN WRITING IN THE ENGLISH LANGUAGE. ANY SUCH NOTICE, REQUEST OR CONSENT SHALL BE DEEMED TO HAVE BEEN GIVEN OR MADE WHEN DELIVERED IN PERSON TO AN AUTHORIZED REPRESENTATIVE OF THE PARTY TO WHOM THE COMMUNICATION IS ADDRESSED, OR WHEN SENT TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THE **SCC.** 6.2 A PARTY MAY CHANGE ITS ADDRESS FOR NOTICE HERE UNDER BY GIVING THE OTHER PARTY ANY COMMUNICATION OF SUCH CHANGE TO THE ADDRESS SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE ADDRESSES ARE *[FILL IN AT NEGOTIATIONS WITH THE SELECTED FIRM]:* PROCURING ENTITY: ATTENTION: FACSIMILE: E-MAIL: CONSULTANT: ATTENTION: FACSIMILE: E-MAIL:	Auto Populate	ENERGY & PETROLEUM REGULATORY AUTHORITY

GCC Reference	**8 AUTHORITY OF MEMBER IN CHARGE** 8.1 IN CASE THE CONSULTANT IS A JOINT VENTURE, THE MEMBERS HEREBY AUTHORIZE THEM EMBER SPECIFIED IN THE **SCC** TO ACT ON THEIR BEHALF IN EXERCISING ALL THE CONSULTANT'S RIGHTS AND OBLIGATIONS TOWARDS THE PROCURING ENTITY UNDER THIS CONTRACT, INCLUDING WITHOUT LIMITATION THE RECEIVING OF INSTRUCTIONS AND PAYMENTS FROM THE PROCURING ENTITY.	-	-
SCC Detail	***[IF THE CONSULTANT CONSISTS ONLY OF ONE ENTITY, STATE "N/A";*** ***OR*** ***IF THE CONSULTANT IS A JOINT VENTURE CONSISTING OF MORE THAN ONE ENTITY, THE NAME OF THE JV MEMBER WHOSE ADDRESS IS SPECIFIED IN CLAUSE SCC6.1 SHOULD BE INSERTED HERE.]*** THE LEAD MEMBER ON BEHALF OF THE JV IS.....[***INSERT NAME OF THE MEMBER]***	Manual Input	
GCC Reference	**9 AUTHORIZED REPRESENTATIVES** 9.1 ANY ACTION REQUIRED OR PERMITTED TO BE TAKEN, AND ANY DOCUMENT REQUIRED OR PERMITTED TO BE EXECUTED UNDER THIS CONTRACT BY THE PROCURING ENTITY OR THE CONSULTANT MAY BE TAKEN OR EXECUTED BY THE OFFICIALS SPECIFIED IN THE SCC.	-	-

SCC Detail	THE AUTHORIZED REPRESENTATIVES ARE: FOR THE PROCURING ENTITY: .....***...[NAME, TITLE]***	Manual Input	
SCC Detail	FOR THE CONSULTANT: ..... ***[NAME, TITLE]***	Manual Input	
GCC Reference	**11.EFFECTIVENESS OF CONTRACT** 11.1 THIS CONTRACT SHALL COME INTO FORCE AND EFFECT ON THE DATE (THE "EFFECTIVE DATE") OF THE PROCURING ENTITY'S NOTICE TO THE CONSULTANT INSTRUCTING THE CONSULTANT TO BEGIN CARRYING OUT THE SERVICES. THIS NOTICE SHALL CONFIRM THAT THE EFFECTIVENESS CONDITIONS, IF ANY, LISTED IN THE **SCC** HAVE BEEN MET.	-	-

SCC Detail	THE EFFECTIVENESS CONDITIONS ARE THE FOLLOWING: ..... ***[NOTE: IF THERE ARE NO EFFECTIVENESS CONDITIONS, STATE "N/A"]*** OR ***LIST HERE ANY CONDITIONS OF EFFECTIVENESS OF THE CONTRACT, E.G., RECEIPT BY THE CONSULTANT OF AN ADVANCE PAYMENT, AND BY THE PROCURING ENTITY OF AN ADVANCE PAYMENT GUARANTEE (SEE CLAUSE SCC45.1(A)), ETC.]***	Manual Input	
GCC Reference	**12.TERMINATION OF CONTRACT FOR FAILURE TO BECOME EFFECTIVE** 12.1 IF THIS CONTRACT HAS NOT BECOME EFFECTIVE WITHIN SUCH TIME PERIOD AFTER THE DATE OF CONTRACT SIGNATURE AS SPECIFIED IN THE **SCC,** EITHER PARTY MAY, BY NOT LESS THAN TWENTY-TWO (22) DAYS WRITTEN NOTICE TO THE OTHER PARTY, DECLARE THIS CONTRACT TO BE NULL AND VOID, AND IN THE EVENT OF SUCH A DECLARATION BY EITHER PARTY, NEITHER PARTY SHALL HAVE ANY CLAIM AGAINST THE OTHER PARTY WITH RESPECT THERE TO.	-	-
SCC Detail	TERMINATION OF CONTRACT FOR FAILURE TO BECOME EFFECTIVE: THE TIME PERIOD SHALL BE..... ***[INSERT TIME PERIOD, E.G.: FOUR MONTHS].***	Manual Input	

GCC Reference	**13. COMMENCEMENT OF SERVICES** 13.1 THE CONSULTANT SHALL CONFIRM AVAILABILITY OF KEY EXPERTS AND BEGINS CARRYING OUT THE SERVICES NOT LATER THAN THE NUMBER OF DAYS AFTER THE EFFECTIVE DATE SPECIFIED IN THE **SCC.**	-	-
SCC Detail	COMMENCEMENT OF SERVICES: THE NUMBER OF DAYS SHALL BE.....***[E.G.: TEN].*** CONFIRMATION OF KEY EXPERTS' AVAILABILITY TO START THE ASSIGNMENT SHALL BE SUBMITTED TO THE PROCURING ENTITY IN WRITING AS A WRITTEN STATEMENT SIGNED BY EACH KEY EXPERT.	Manual Input	
GCC Reference	**14. EXPIRATION OF CONTRACT** 14.1 UNLESS TERMINATED EARLIER PURSUANT TO CLAUSE GCC19 HEREOF, THIS CONTRACT SHALL EXPIRE AT THE END OF SUCH TIME PERIOD AFTER THE EFFECTIVE DATE AS SPECIFIED IN THE SCC	-	-
SCC Detail	EXPIRATION OF CONTRACT: THE TIME PERIOD SHALL BE..... ***[INSERT TIME PERIOD, E.G.: TWELVE MONTHS].***	Manual Input	

GCC Reference	**21. CONFLICT OF INTERESTS** B) **CONSULTANT AND AFFILIATES NOT TO ENGAGE IN CERTAIN ACTIVITIES** 21.1.3 THE CONSULTANT AGREES THAT THE PROCURING ENTITY, AS SPECIFIED IN THE **SCC** AND DURING THE TERM OF THIS CONTRACT AND AFTER ITS TERMINATION, THE CONSULTANT AND ANY ENTITY AFFILIATED WITH THE CONSULTANT, AS WELL AS ANY SUB-CONSULTANTS AND ANY ENTITY AFFILIATED WITH SUCH SUB- CONSULTANTS, SHALL BE DISQUALIFIED FROM PROVIDING GOODS, WORKS OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO THE CONSULTANT'S SERVICES FOR THE PREPARATION OR IMPLEMENTATION OF THE PROJECT.	-	-
SCC Detail	THE PROCURING ENTITY RESERVES THE RIGHT TO DETERMINE ON A CASE-BY-CASE BASIS WHETHER THE CONSULTANT SHOULD BE DISQUALIFIED FROM PROVIDING GOODS, WORKS OR NON-CONSULTING SERVICES DUE TO A CONFLICT OF A NATURE DESCRIBED IN CLAUSE GCC 21.1.3 YES:..... NO:	Manual Input	
GCC Reference	**23. LIABILITY OF THE CONSULTANT** 23.1 SUBJECT TO ADDITIONAL PROVISIONS, IF ANY, SET FOR IN THE **SCC,** THE CONSULTANT'S LIABILITY UNDER THIS CONTRACT SHALL BE AS DETERMINED UNDER THE APPLICABLE LAW.	-	-

SCC Detail	NO ADDITIONAL PROVISIONS. [OR THE FOLLOWING LIMITATION OF THE CONSULTANT'S LIABILITY TOWARDS THE PROCURING ENTITY CAN BE SUBJECT TO THE CONTRACT'S NEGOTIATIONS: "LIMITATION OF THE CONSULTANT'S LIABILITY TOWARDS THE PROCURING ENTITY: (A) EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT ON THE PART OF THE CONSULTANT OR ON THE PART OF ANY PERSON OR A FIRM ACTING ON BEHALF OF THE CONSULTANT IN CARRYING OUT THE SERVICES, THE CONSULTANT, WITH RESPECT TO DAMAGE CAUSED BY THE CONSULTANT TO THE PROCURING ENTITY'S PROPERTY, SHALL NOT BE LIABLE TO THE PROCURING ENTITY: (I) FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE; AND (II) FOR ANY DIRECT LOSS OR DAMAGE THAT EXCEEDS TWO TIMES THE TOTAL VALUE OF THE CONTRACT. (B) THIS LIMITATION OF LIABILITY SHALL NOT (I) AFFECT THE CONSULTANT'S LIABILITY, IF ANY, FOR DAMAGE TO THIRD PARTIES CAUSED BY THE CONSULTANT OR ANY PERSON OR FIRM ACTING ON BEHALF OF THE CONSULTANT IN CARRYING OUT THE SERVICES; (II) BE CONSTRUED AS PROVIDING THE CONSULTANT WITH ANY LIMITATION OR EXCLUSION FROM LIABILITY WHICH IS PROHIBITED BY THE APPLICABLE LAW.	Manual Input	

[NOTES TO THE PROCURING ENTITY AND THE CONSULTANT:

ANY SUGGESTIONS MADE BY THE CONSULTANT IN THE PROPOSAL TO INTRODUCE EXCLUSIONS/LIMITATIONS OF THE CONSULTANT'S LIABILITY UNDER THE CONTRACT SHOULD BE CAREFULLY SCRUTINIZED BY THE PROCURING ENTITY PRIOR TO ACCEPTING ANY CHANGES TO WHAT WAS INCLUDED IN THE ISSUED RFP.

TO BE ACCEPTABLE TO THE PROCURING ENTITY, ANY LIMITATION OF THE CONSULTANT' S LIABILITY SHOULD AT THE VERY LEAST BE REASONABLY RELATED TO (A) THE DAMAGE THE CONSULTANT MIGHT POTENTIALLY CAUSE TO THE PROCURING ENTITY, AND (B) THE CONSULTANT'S ABILITY TO PAY COMPENSATION USING ITS OWN ASSETS AND REASONABLY OBTAINABLE INSURANCE COVERAGE. THE CONSULTANT'S LIABILITY SHALL NOT BE LIMITED TO LESS THAN A MULTIPLIER OF THE TOTAL PAYMENTS TO THE CONSULTANT UNDER THE CONTRACT FOR REMUNERATION AND REIMBURSABLE EXPENSES. A STATEMENT TO THE EFFECT THAT THE CONSULTANT IS LIABLE ONLY FOR THE RE-PERFORMANCE OF FAULTY SERVICES IS NOT ACCEPTABLE TO THE PROCURING ENTITY. ALSO, THE CONSULTANT'S LIABILITY SHOULD NEVER BE LIMITED FOR LOSS OR DAMAGE CAUSED BY THE CONSULTANT'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT.

	THE PROCURING ENTITY DOES NOT ACCEPT A PROVISION TO THE EFFECT THAT THE PROCURING ENTITY SHALL INDEMNIFY AND HOLD HARMLESS THE CONSULTANT AGAINST THIRD PARTY CLAIMS, EXCEPT, OF COURSE, IF A CLAIM IS BASED ON LOSS OR DAMAGE CAUSED BY A DEFAULT OR WRONGFUL ACT OF THE PROCURING ENTITY TO THE EXTENT PERMISSIBLE BY THE LAW APPLICABLE IN KENYA.]		
GCC Reference	**24. INSURANCE TO BE TAKEN OUT BY THE CONSULTANT** 24.1 THE CONSULTANT (I) SHALL TAKE OUT AND MAINTAIN AND SHALL CAUSE ANY SUB-CONSULTANTS TO TAKE OUT AND MAINTAIN, AT ITS (OR THE SUB-CONSULTANTS', AS THE CASE MAY BE) OWN COST BUT ON TERMS AND CONDITIONS APPROVED BY THE PROCURING ENTITY, INSURANCE AGAINST THE RISKS, AND FOR THE COVERAGE SPECIFIED IN THE SCC, AND (II) AT THE PROCURING ENTITY'S REQUEST, SHALL PROVIDE EVIDENCE TO THE PROCURING ENTITY SHOWING THAT SUCH INSURANCE HAS BEEN TAKEN OUT AND MAINTAINED AND THAT THE CURRENT PREMIUMS THEREFORE HAVE BEEN PAID. THE CONSULTANT SHALL ENSURE THAT SUCH INSURANCE IS IN PLACE PRIOR TO COMMENCING THE SERVICES AS STATED IN CLAUSE GCC13.	-	-
SCC Detail	THE INSURANCE COVERAGE AGAINST THE RISKS SHALL BE AS FOLLOWS: *[DELETE WHAT IS NOT APPLICABLE EXCEPT (A)].*	Manual Input	

(A) PROFESSIONAL LIABILITY INSURANCE, WITH A MINIMUM COVERAGE OF..... [***INSERT AMOUNT AND CURRENCY WHICH SHOULD BE NOT LESS THAN THE TOTAL CEILING AMOUNT OF THE CONTRACT];***

(B) THIRD PARTY MOTOR VEHICLE LIABILITY INSURANCE IN RESPECT OF MOTOR VEHICLES OPERATED IN THE PROCURING ENTITY'S COUNTRY BY THE CONSULTANT OR ITS EXPERTS OR SUB-CONSULTANTS, WITH A MINIMUM COVERAGE OF ..... ***[INSERT AMOUNT AND CURRENCY OR STATE "IN ACCORDANCE WITH THE APPLICABLE LAW IN THE PROCURING ENTITY'S COUNTRY"];***

(C) THIRD PARTY LIABILITY INSURANCE, WITH A MINIMUM COVERAGE OF..... ***[INSERT AMOUNT AND CURRENCY OR STATE "IN ACCORDANCE WITH THE APPLICABLE LAW IN KENYA"];***

(D) EMPLOYER'S LIABILITY AND WORKERS' COMPENSATION INSURANCE IN RESPECT OF THE EXPERTS AND SUB-CONSULTANTS IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE APPLICABLE LAW IN KENYA, AS WELL AS, WITH RESPECT TO SUCH EXPERTS, ANY SUCH LIFE, HEALTH, ACCIDENT, TRAVEL OR OTHER INSURANCE AS MAY BE APPROPRIATE; AND

	(E) INSURANCE AGAINST LOSS OF OR DAMAGE TO (I) EQUIPMENT PURCHASED IN WHOLE OR IN PART WITH FUNDS PROVIDED UNDER THIS CONTRACT, (II) THE CONSULTANT' S PROPERTY USED IN THE PERFORMANCE OF THE SERVICES, AND (III) ANY DOCUMENTS PREPARED BY THE CONSULTANT IN THE PERFORMANCE OF THE SERVICES.		
GCC Reference	**27. PROPRIETARY RIGHTS OF THE PROCURING ENTITY IN REPORTS AND RECORDS** 27.1 UNLESS OTHERWISE INDICATED IN THE **SCC,** ALL REPORTS AND RELEVANT DATA AND INFORMATION SUCH AS MAPS, DIAGRAMS, PLANS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, SUPPORTING RECORDS OR MATERIAL COMPILED OR PREPARED BY THE CONSULTANT FOR THE PROCURING ENTITY IN THE COURSE OF THE SERVICES SHALL BE CONFIDENTIAL AND BECOME AND REMAIN THE ABSOLUTE PROPERTY OF THE PROCURING ENTITY. THE CONSULTANT SHALL, NOT LATER THAN UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, DELIVER ALL SUCH DOCUMENTS TO THE PROCURING ENTITY, TOGETHER WITH A DETAILED INVENTORY THEREOF. THE CONSULTANT MAY RETAIN A COPY OF SUCH DOCUMENTS, DATA AND/OR SOFTWARE BUT SHALL NOT USE THE SAME FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT PRIOR WRITTEN APPROVAL OF THE PROCURING ENTITY.	-	-

SCC Detail	THE ADDITIONAL RIGHTS TO THE USE OF THE DOCUMENTS ARE:..... ***[IF APPLICABLE, INSERT ANY EXCEPTIONS TO PROPRIETARY RIGHTS PROVISIONS]***	Manual Input	
GCC Reference	27.2 IF LICENSE AGREEMENTS ARE NECESSARY OR APPROPRIATE BETWEEN THE CONSULTANT AND THIRD PARTIES FOR PURPOSES OF DEVELOPMENT OF THE PLANS, DRAWINGS, SPECIFICATIONS, DESIGNS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, THE CONSULTANT SHALL OBTAIN THE PROCURING ENTITY'S PRIOR WRITTEN APPROVAL TO SUCH AGREEMENTS, AND THE PROCURING ENTITY SHALL BE ENTITLED AT ITS DISCRETION TO REQUIRE RECOVERING THE EXPENSES RELATED TO THE DEVELOPMENT OF THE PROGRAM(S) CONCERNED. OTHER RESTRICTIONS ABOUT THE FUTURE USE OF THESE DOCUMENTS AND SOFTWARE, IF ANY, SHALL BE SPECIFIED IN THE **SCC.**	-	-

SCC Detail	***[IF THERE IS TO BE NO RESTRICTION ON THE FUTURE USE OF THESE DOCUMENTS BY EITHER PARTY, THIS CLAUSE SCC 27.2 SHOULD BE INDICATED AS NOT APPLICABLE.*** ***IF THE PARTIES WISH TO RESTRICT SUCH USE, ANY OF THE FOLLOWING OPTIONS, OR ANY OTHER OPTION AGREED TO BY THE PARTIES, COULD BE USED:*** [THE CONSULTANT SHALL NOT USE THESE..... ***[INSERT WHAT APPLIES.....*** DOCUMENTS AND SOFTWARE....] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE PROCURING ENTITY.] [OR] [THE PROCURING ENTITY SHALL NOT USE THES [***INSERT WHAT APPLIES***..... DOCUMENTS AND SOFTWARE.....] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE CONSULTANT.] [OR] [NEITHER PARTY SHALL USE THESE ***[INSERT WHAT APPLIES***..... DOCUMENTS AND SOFTWARE.....] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE OTHER PARTY.]	Manual Input	
GCC Reference	**32. ASSISTANCE AND EXEMPTIONS**	-	-

32.1 UNLESS OTHERWISE SPECIFIED IN THE **SCC,** THE PROCURING ENTITY SHALL USE ITS BEST EFFORTS TO:

A ASSIST THE CONSULTANT WITH OBTAINING WORK PERMITS AND SUCH OTHER DOCUMENTS AS SHALL BE NECESSARY TO ENABLE THE CONSULTANT TO PERFORM THE SERVICES.

B ASSIST THE CONSULTANT WITH PROMPTLY OBTAINING, FOR THE EXPERTS AND, IF APPROPRIATE, THEIR ELIGIBLE DEPENDENTS, ALL NECESSARY ENTRY AND EXIT VISAS, RESIDENCE PERMITS, EXCHANGE PERMITS AND ANY OTHER DOCUMENTS REQUIRED FOR THEIR STAY IN KENYA WHILE CARRYING OUT THE SERVICES UNDER THE CONTRACT.

C FACILITATE PROMPT CLEARANCE THROUGH CUSTOMS OF ANY PROPERTY REQUIRED FOR THE SERVICES AND OF THE PERSONAL EFFECTS OF THE EXPERT SAND THEIR ELIGIBLE DEPENDENTS.

D ISSUE TO OFFICIALS, AGENTS AND REPRESENTATIVES OF THE GOVERNMENT ALL SUCH INSTRUCTIONS AND INFORMATION AS MAY BE NECESSARY OR APPROPRIATE FOR THE PROMPT AND EFFECTIVE IMPLEMENTATION OF THE SERVICES.

E ASSIST THE CONSULTANT AND THE EXPERTS AND ANY SUB-CONSULTANTS EMPLOYED BY THE CONSULTANT FOR THE SERVICES WITH OBTAINING EXEMPTION FROM ANY REQUIREMENT TO REGISTER OR OBTAIN ANY PERMIT TO PRACTICE THEIR PROFESSION OR TO ESTABLISH THEMSELVES EITHER INDIVIDUALLY OR AS A CORPORATE ENTITY IN KENYA ACCORDING TO THE APPLICABLE LAW IN KENYA

F ASSIST THE CONSULTANT, ANY SUB-

	CONSULTANTS AND THE EXPERTS OF EITHER OF THEM WITH OBTAINING THE PRIVILEGE, PURSUANT TO THE APPLICABLE LAW IN KENYA, OF BRINGING IN TO KENYA REASONABLE AMOUNTS OF FOREIGN CURRENCY FOR THE PURPOSES OF THE SERVICES OR FOR THE PERSONAL USE OF THE EXPERTS AND OF WITHDRAWING ANY SUCH AMOUNTS AS MAY BE EARNED THEREIN BY THE EXPERTS IN THE EXECUTION OF THE SERVICES.		
SCC Detail	***[LIST HERE ANY CHANGES OR ADDITIONS TO CLAUSE GCC 32.1. IF THERE ARE NO SUCH CHANGES OR ADDITIONS, INDICATE NOT APPLICABLE.]***	Manual Input	
GCC Reference	G PROVIDE TO THE CONSULTANT ANY SUCH OTHER ASSISTANCE AS MAY BE SPECIFIED IN THE **SCC.**	-	-
SCC Detail	[*LIST HERE ANY OTHER ASSISTANCE TO BE PROVIDED BY THE PROCURING ENTITY. IF THERE IS NO SUCH OTHER ASSISTANCE, INDICATE NOT APPLICABLE FOR THIS CLAUSE SCC 32.1(G).]*	Manual Input	
GCC Reference	**38.CONTRACT PRICE** 38.1 THE CONTRACT PRICE IS FIXED AND IS SET FORTH IN THE **SCC.** THE CONTRACT PRICE BREAKDOWN IS PROVIDED IN APPENDIX C.	-	-

SCC Detail	THE CONTRACT PRICE IS: .....[***INSERT AMOUNT AND CURRENCY FOR EACH CURRENCY AS APPLICABLE]*** [***INDICATE***: INCLUSIVE OR EXCLUSIVE] OF LOCAL TAXES. ANY LOCAL TAXES CHARGEABLE IN RESPECT OF THIS CONTRACT FOR THE SERVICES PROVIDED BY THE CONSULTANT SHALL..... ***[INSERT AS APPROPRIATE: "BE PAID" OR "REIMBURSED"]*** BY THE PROCURING ENTITY ***[INSERT AS APPROPRIATE***: "FOR "OR "TO"] THE CONSULTANT. THE AMOUNT OF SUCH TAXES IS ..... [INSERT THE AMOUNT AS FINALIZED AT THE CONTRACT'S NEGOTIATIONS ON THE BASIS OF THE TAX AMOUNTS PROVIDED BY THE CONSULTANT IN FORM FIN-2 OF THE CONSULTANT'S FINANCIAL PROPOSAL.	Manual Input	
GCC Reference	**39.TAXES AND DUTIES** 39.1 THE CONSULTANT, SUB-CONSULTANTS AND EXPERTS ARE RESPONSIBLE FOR MEETING ANY AND ALL TAX LIABILITIES ARISING OUT OF THE CONTRACT UNLESS IT IS STATED OTHERWISE IN THE **SCC**. CURRENCY OF PAYMENT. 39.2 ANY PAYMENT UNDER THIS CONTRACT SHALL BE MADE IN THE CURRENCY (IES) OF THE CONTRACT.	-	-
SCC Detail		Manual Input	

[THE PROCURING ENTITY, DEPENDING ON THE SOURCE OF FUNDS AND TAX EXEMPTIONS ALREADY GRANTED BY THE GOVERNMENT, SHALL DECIDE WHETHER THE CONSULTANT (I) SHOULD BE EXEMPTED FROM LOCAL TAX, OR (II) SHOULD BE REIMBURSED BY THE PROCURING ENTITY FOR ANY SUCH TAX THEY MIGHT HAVE TO PAY (OR THAT THE PROCURING ENTITY WOULD PAY SUCH TAX ON BEHALF OF THE CONSULTANT]

THE PROCURING ENTITY WARRANTS THAT *[CHOOSE ONE APPLICABLE OPTION CONSISTENT WITH THE ITC 16.3 AND THE OUTCOME OF THE CONTRACT'S NEGOTIATIONS (FORM FIN-2]*
*IF ITC16.3 INDICATES A TAX EXEMPTION STATUS, INCLUDE THE FOLLOWING: "*THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS SHALL BE EXEMPT FROM"

OR

IF ITC16.3 DOES NOT INDICATE THE EXEMPTION AND, DEPENDING ON WHETHER THE PROCURING ENTITY SHALL PAY THE WITHHOLDING TAX OR THE CONSULTANT HAS TO PAY, INCLUDE THE FOLLOWING:

"THE PROCURING ENTITY SHALL PAY ON BEHALF OF THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS," OR "THE PROCURING ENTITY SHALL REIMBURSE THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS"] ANY TAXES, DUTIES, FEES, LEVIES AND OTHER IMPOSITIONS IMPOSED, UNDER THE APPLICABLE LAW IN THE PROCURING ENTITY'S COUNTRY, ON THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS IN RESPECT OF:

(A) ANY PAYMENTS WHATSOEVER MADE TO THE CONSULTANT, SUB-CONSULTANTS AND THE EXPERTS (OTHER THAN NATIONALS OR PERMANENT RESIDENTS OF KENYA), IN CONNECTION WITH THE CARRYING OUT OF THE SERVICES;

(B) ANY EQUIPMENT, MATERIALS AND SUPPLIES BROUGHT INTO KENYA BY THE CONSULTANT OR SUB-CONSULTANTS FOR THE PURPOSE OF CARRYING OUT THE SERVICES AND WHICH, AFTER HAVING BEEN BROUGHT INTO SUCH TERRITORIES, WILL BE SUBSEQUENTLY WITHDRAWN BY THEM;

(C) ANY EQUIPMENT IMPORTED FOR THE PURPOSE OF CARRYING OUT THE SERVICES AND PAID FOR OUT OF FUNDS PROVIDED BY THE PROCURING ENTITY AND WHICH IS TREATED AS PROPERTY OF THE PROCURING ENTITY;

	(D) ANY PROPERTY BROUGHT INTO KENYA BY THE CONSULTANT, ANY SUB-CONSULTANTS OR THE EXPERTS (OTHER THAN NATIONALS OR PERMANENT RESIDENTS OF KENYA), OR THE ELIGIBLE DEPENDENTS OF SUCH EXPERTS FOR THEIR PERSONAL USE AND WHICH WILL SUBSEQUENTLY BE WITHDRAWN BY THEM UPON THEIR RESPECTIVE DEPARTURE FROM THE PROCURING ENTITY'S COUNTRY, PROVIDED THAT: (I) THE CONSULTANT, SUB-CONSULTANTS AND EXPERTS SHALL FOLLOW THE USUAL CUSTOMS PROCEDURES OF KENYA IN IMPORTING PROPERTY INTO KENYA; AND (II) IF THE CONSULTANT, SUB-CONSULTANTS OR EXPERTS DO NOT WITHDRAW BUT DISPOSE OF ANY PROPERTY IN THE PROCURING ENTITY' S COUNTRY UPON WHICH CUSTOMS DUTIES AND TAXES HAVE BEEN EXEMPTED, THE CONSULTANT, SUB-CONSULTANTS OR EXPERTS, AS THE CASE MAY BE, (A) SHALL BEAR SUCH CUSTOMS DUTIES AND TAXES IN CONFORMITY WITH THE REGULATIONS OF KENYA, OR (B) SHALL REIMBURSE THEM TO THE PROCURING ENTITY IF THEY WERE PAID BY THE PROCURING ENTITY AT THE TIME THE PROPERTY IN QUESTION WAS BROUGHT INTO THE PROCURING ENTITY'S COUNTRY.		

GCC Reference	**40.MODE OF BILLING AND PAYMENT** 40.2 THE PAYMENTS UNDER THIS CONTRACT SHALL BE MADE IN LUMP-SUM INSTALMENTS AGAINST DELIVERABLES SPECIFIED IN APPENDIX A. THE PAYMENTS WILL BE MADE ACCORDING TO THE PAYMENT SCHEDULE STATED IN THE **SCC**.	-	-

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SCC Detail	THE PAYMENT SCHEDULE: ***[PAYMENT OF INSTALMENTS SHALL BE LINKED TO THE DELIVERABLES SPECIFIED IN THE TERMS OF REFERENCE IN APPENDIX A]*** 1ST PAYMENT: .....[***INSERT THE AMOUNT OF THE INSTALMENT, PERCENTAGE OF THE TOTAL CONTRACT PRICE, AND THE CURRENCY. IF THE FIRST PAYMENT IS AN ADVANCE PAYMENT, IT SHALL BE MADE AGAINST THE BANK GUARANTEE FOR THE SAME AMOUNT AS PER GCC 41.2.1]. E.G. "TWENTY (20) PERCENT OF THE LUMP SUM CONTRACT PRICE SHALL BE PAID UPON SUBMISSION AND APPROVAL OF THE INCEPTION REPORT*** 2ND PAYMENT: EXAMPLE: SIXTY (60) PERCENT OF THE LUMP SUM CONTRACT PRICE SHALL BE PAID UPON SUBMISSION OF AN ACCEPTABLE DRAFT REPORT. 3RD AND FINAL PAYMENT: EXAMPLE: TWENTY (20) PERCENT OF THE LUMP SUM CONTRACT PRICE SHALL BE PAID UPON SUBMISSION AND APPROVAL OF THE FINAL REPORT. ***[TOTAL SUM OF ALL INSTALMENTS SHALL NOT EXCEED THE CONTRACT PRICE SET UP IN SCC38.1. EVERY PAYMENT SHALL BE SUBJECT TO (I) SUBMISSION TO THE PROCURING ENTITY OF THE PREREQUISITE REPORT AND/OR PAYMENT REQUEST DOCUMENTS, AND, (II) APPROVAL AND ACCEPTANCE OF THE SAID REPORTS AND DOCUMENTS BY THE PROCURING ENTITY]***	Manual Input	

GCC Reference	40.2.1 ADVANCE PAYMENT: UNLESS OTHERWISE INDICATED IN THE SCC, AN ADVANCE PAYMENT SHALL BE MADE AGAINST AN ADVANCE PAYMENT BANK GUARANTEE ACCEPTABLE TO THE PROCURING ENTITY IN AN AMOUNT (OR AMOUNTS) AND IN A CURRENCY (OR CURRENCIES) SPECIFIED IN THE **SCC.** SUCH GUARANTEE (I) IS TO REMAIN EFFECTIVE UNTIL THE ADVANCE PAYMENT HAS BEEN FULLY SET OFF, AND (II) IS TO BE IN THE FORM SET FORTH IN APPENDIX D, OR IN SUCH OTHER FORM AS THE PROCURING ENTITY SHALL HAVE APPROVED IN WRITING. THE ADVANCE PAYMENTS WILL BE SET OFF BY THE PROCURING ENTITY IN EQUAL PORTIONS AGAINST THE LUMP-SUM INSTALMENTS SPECIFIED IN THE SCC UNTIL SAID ADVANCE PAYMENTS HAVE BEEN FULLY SET OFF.	-	-

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SCC Detail	***[THE ADVANCE PAYMENT COULD BE IN EITHER THE FOREIGN CURRENCY, OR THE LOCAL CURRENCY, OR BOTH; SELECT THE CORRECT WORDING IN THE CLAUSE HERE BELOW. THE ADVANCE BANK PAYMENT GUARANTEE SHOULD BE IN THE SAME CURRENCY(IES)]*** THE FOLLOWING PROVISIONS SHALL APPLY TO THE ADVANCE PAYMENT AND THE ADVANCE BANK PAYMENT GUARANTEE: (1) AN ADVANCE PAYMENT..... ***[OF [INSERT AMOUNT]*** IN FOREIGN CURRENCY] [AND OF..... ***[INSERT AMOUNT]*** IN KENYA SHILLINGS] SHALL BE MADE WITHIN..... ***[INSERT NUMBER]*** DAYS AFTER THE RECEIPT OF AN ADVANCE BANK PAYMENT GUARANTEE BY THE PROCURING ENTITY. THE ADVANCE PAYMENT WILL BE SET OFF BY THE PROCURING ENTITY IN EQUAL PORTIONS AGAINST [LIST THE PAYMENTS AGAINST WHICH THE ADVANCE IS OFFSET]. (2) THE ADVANCE BANK PAYMENT GUARANTEE SHALL BE IN THE AMOUNT AND IN THE CURRENCY OF THE CURRENCY (IES) OF THE ADVANCE PAYMENT. (3) THE BANK GUARANTEE WILL BE RELEASED WHEN THE ADVANCE PAYMENT HAS BEEN FULLY SET OFF.	Manual Input	
GCC Reference	40.2.4 ALL PAYMENTS UNDER THIS CONTRACT SHALL BE MADE TO THE ACCOUNTS OF THE CONSULTANT SPECIFIED IN THE SCC.	-	-

SCC Detail	THE ACCOUNTS ARE: FOR FOREIGN CURRENCY: .....***[INSERT ACCOUNT].*** FOR LOCAL CURRENCY: .....***[INSERT ACCOUNT].***	Manual Input	
GCC Reference	**41.INTEREST ON DELAYED PAYMENTS** 41.1 IF THE PROCURING ENTITY HAD DELAYED PAYMENTS BEYOND THIRTY (30) DAYS AFTER THE DUE DATE STATED IN CLAUSE GCC 40.2.3, INTEREST SHALL BE PAID TO THE CONSULTANT ON ANY AMOUNT DUE BY, NOT PAID ON, SUCH DUE DATE FOR EACH DAY OF DELAY AT THE ANNUAL RATE STATED IN THE **SCC.**	-	-
SCC Detail	THE INTEREST RATE IS:..... ***[INSERT RATE].***	Manual Input	
GCC Reference	**44.DISPUTE RESOLUTION** 44.1 ANY DISPUTE BETWEEN THE PARTIES ARISING UNDER OR RELATED TO THIS CONTRACT THAT CANNOT BE SETTLED AMICABLY MAY BE REFERRED TO BY EITHER PARTY TO THE ADJUDICATION/ARBITRATION IN ACCORDANCE WITH THE PROVISIONS SPECIFIED IN THE SCC.	-	-
SCC Detail	DISPUTES SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:	Manual Input	

1. SELECTION OF ARBITRATORS. EACH DISPUTE SUBMITTED BY A PARTY TO ARBITRATION SHALL BE HEARD BY A SOLE ARBITRATOR OR AN ARBITRATION PANEL COMPOSED OF THREE (3) ARBITRATORS, IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

(A) WHERE THE PARTIES AGREE THAT THE DISPUTE CONCERNS A TECHNICAL MATTER, THEY MAY AGREE TO APPOINT A SOLE ARBITRATOR OR, FAILING AGREEMENT ON THE IDENTITY OF SUCH SOLE ARBITRATOR WITHIN THIRTY (30) DAYS AFTER RECEIPT BY THE OTHER PARTY OF THE PROPOSAL OF A NAME FOR SUCH AN APPOINTMENT BY THE PARTY WHO INITIATED THE PROCEEDINGS, EITHER PARTY MAY APPLY TO..... [***NAME AN APPROPRIATE INTERNATIONAL PROFESSIONAL BODY, E.G., THE FEDERATION INTERNATIONALE DES INGENIEURS-CONSEIL (FIDIC) OF LAUSANNE, SWITZERLAND]*** FOR A LIST OF NOT FEWER THAN FIVE (5) NOMINEES AND, ON RECEIPT OF SUCH LIST, THE PARTIES SHALL ALTERNATELY STRIKE NAMES THEREFROM, AND THE LAST REMAINING NOMINEE ON THE LIST SHALL BE THE SOLE ARBITRATOR FOR THE MATTER IN DISPUTE. IF THE LAST REMAINING NOMINEE HAS NOT BEEN DETERMINED IN THIS MANNER WITHIN SIXTY (60) DAYS OF THE DATE OF THE LIST, ...***[INSERT THE NAME OF THE SAME PROFESSIONAL BODY AS ABOVE]*** SHALL APPOINT, UPON THE REQUEST OF EITHER PARTY AND FROM SUCH LIST OR OTHERWISE, A SOLE ARBITRATOR FOR THE MATTER IN DISPUTE.

(B) WHERE THE PARTIES DO NOT AGREE THAT THE DISPUTE CONCERNS A TECHNICAL MATTER, THE PROCURING ENTITY AND THE CONSULTANT SHALL EACH APPOINT ONE (1) ARBITRATOR, AND THESE TWO ARBITRATORS SHALL JOINTLY APPOINT A THIRD ARBITRATOR, WHO SHALL CHAIR THE ARBITRATION PANEL. IF THE ARBITRATORS NAMED BY THE PARTIES DO NOT SUCCEED IN APPOINTING A THIRD ARBITRATOR WITHIN THIRTY (30) DAYS AFTER THE LATTER OF THE TWO (2) ARBITRATORS NAMED BY THE PARTIES HAS BEEN APPOINTED, THE THIRD ARBITRATOR SHALL, AT THE REQUEST OF EITHER PARTY, BE APPOINTED BY..... ***[NAME AN APPROPRIATE INTERNATIONAL APPOINTING AUTHORITY, E. G., THE SECRETARY GENERAL OF THE PERMANENT COURT OF ARBITRATION, THE HAGUE; THE SECRETARY GENERAL OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, WASHINGTON, D.C.; THE INTERNATIONAL CHAMBER OF COMMERCE, PARIS; ETC.].***

(C) IF, IN A DISPUTE SUBJECT TO PARAGRAPH (B) ABOVE, ONE PARTY FAILS TO APPOINT ITS ARBITRATOR WITHIN THIRTY (30) DAYS AFTER THE OTHER PARTY HAS APPOINTED ITS ARBITRATOR, THE PARTY WHICH HAS NAMED AN ARBITRATOR MAY APPLY TO THE..... ***[NAME THE SAME APPOINTING AUTHORITY AS IN SAID PARAGRAPH (B)]*** TO APPOINT A SOLE ARBITRATOR FOR THE MATTER IN DISPUTE, AND THE ARBITRATOR APPOINTED PURSUANT TO SUCH APPLICATION SHALL BE THE SOLE ARBITRATOR FOR THAT DISPUTE.

2. RULES OF PROCEDURE. EXCEPT AS OTHERWISE STATED HEREIN, ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF PROCEDURE FOR ARBITRATION OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) AS IN FORCE ON THE DATE OF THIS CONTRACT.

3. SUBSTITUTE ARBITRATORS. IF FOR ANY REASON AN ARBITRATOR IS UNABLE TO PERFORM HIS/HER FUNCTION, A SUBSTITUTE SHALL BE APPOINTED IN THE SAME MANNER AS THE ORIGINAL ARBITRATOR.

4. NATIONALITY AND QUALIFICATIONS OF ARBITRATORS. THE SOLE ARBITRATOR OR THE THIRD ARBITRATOR APPOINTED PURSUANT TO PARAGRAPHS 1(A) THROUGH 1(C) ABOVE SHALL BE AN INTERNATIONALLY RECOGNIZED LEGAL OR TECHNICAL EXPERT WITH EXTENSIVE EXPERIENCE IN RELATION TO THE MATTER IN DISPUTE AND SHALL NOT BE A NATIONAL OF THE CONSULTANT'S HOME COUNTRY [IF THE CONSULTANT CONSISTS OF MORE THAN ONE ENTITY, ADD: OR OF THE HOME COUNTRY OF ANY OF THEIR MEMBERS OR PARTIES] OR OF THE GOVERNMENT'S COUNTRY. FOR THE PURPOSES OF THIS CLAUSE, "HOME COUNTRY" MEANS ANY OF:

(A) THE COUNTRY OF INCORPORATION OF THE CONSULTANT [IF THE CONSULTANT CONSISTS OF MORE THAN ONE ENTITY, ADD: OR OF ANY OF THEIR MEMBERS OR PARTIES]; OR

(B) THE COUNTRY IN WHICH THE CONSULTANT'S [OR ANY OF THEIR MEMBERS' OR PARTIES'] PRINCIPAL PLACE OF BUSINESS IS LOCATED; OR

(C) THE COUNTRY OF NATIONALITY OF A MAJORITY OF THE CONSULTANT'S [OR OF ANY MEMBERS' OR PARTIES'] SHAREHOLDERS; OR

(D) THE COUNTRY OF NATIONALITY OF THE SUB-CONSULTANTS CONCERNED, WHERE THE DISPUTE INVOLVES A SUBCONTRACT.

5. MISCELLANEOUS.

IN ANY ARBITRATION PROCEEDING HEREUNDER:
(A) PROCEEDINGS SHALL, UNLESS OTHERWISE AGREED BY THE PARTIES, BE HELD IN [SELECT A COUNTRY WHICH IS NEITHER THE PROCURING ENTITY'S COUNTRY NOR THE CONSULTANT'S COUNTRY];
(B) THE [TYPE OF LANGUAGE] LANGUAGE SHALL BE THE OFFICIAL LANGUAGE FOR ALL PURPOSES; AND
(C) THE DECISION OF THE SOLE ARBITRATOR OR OF A MAJORITY OF THE ARBITRATORS (OR OF THE THIRD ARBITRATOR IF THERE IS NO SUCH MAJORITY) SHALL BE FINAL AND BINDING AND SHALL BE ENFORCEABLE IN ANY COURT OF COMPETENT JURISDICTION, AND THE PARTIES HEREBY WAIVE ANY OBJECTIONS TO OR CLAIMS OF IMMUNITY IN RESPECT OF SUCH ENFORCEMENT.

GCC Reference	**A. GENERAL PROVISIONS (TIME-BASED CONTRACT)** **1.DEFINITIONS** 1.1 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS WHENEVER USED IN THIS CONTRACT HAVE THE FOLLOWING MEANINGS: A) "APPLICABLE LAW" MEANS THE LAWS AND ANY OTHER INSTRUMENTS HAVING THE FORCE OF LAW IN KENYA AS SPECIFIED IN THE ***SCC.***	-	-
SCC Detail	THE CONTRACT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF KENYA	Manual Input	
GCC Reference	**4. LANGUAGE** 4.1 THIS CONTRACT HAS BEEN EXECUTED IN THE LANGUAGE SPECIFIED IN THE SCC, WHICH SHALL BE THE BINDING AND CONTROLLING LANGUAGE FOR ALL MATTERS RELATING TO THE MEANING OR INTERPRETATION OF THIS CONTRACT.	-	-
SCC Detail	THE LANGUAGE IS ENGLISH	Manual Input	

GCC Reference	**6. COMMUNICATIONS** 6.1 ANY COMMUNICATION REQUIRED OR PERMITTED TO BE GIVEN OR MADE PURSUANT TO THIS CONTRACT SHALL BE IN WRITING IN THE LANGUAGE SPECIFIED IN CLAUSE GCC3. ANY SUCH NOTICE, REQUEST OR CONSENT SHALL BE DEEMED TO HAVE BEEN GIVE NOR MADE WHEN DELIVERED IN PERSON TO AN AUTHORIZED REPRESENTATIVE OF THE PARTY TO WHOM THE COMMUNICATION IS ADDRESSED, OR WHEN SENT TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE ADDRESSES ARE [FILL IN AT NEGOTIATIONS WITH THE SELECTED FIRM]:	Manual Input	
SCC Detail	PROCURING ENTITY:	Auto Populate	ENERGY & PETROLEUM REGULATORY AUTHORITY
SCC Detail	ATTENTION:	Manual Input	
SCC Detail	E-MAIL:	Manual Input	
GCC Reference	6.2 A PARTY MAY CHANGE ITS ADDRESS FOR NOTICE HERE UNDER BY GIVING THE OTHER PARTY ANY COMMUNICATION OF SUCH CHANGE TO THE ADDRESS SPECIFIED IN THE **SCC.**	-	-

SCC Detail	CONSULTANT:	Manual Input	
SCC Detail	ATTENTION:	Manual Input	
SCC Detail	E-MAIL:	Manual Input	
GCC Reference	**8. AUTHORITY OF MEMBER IN CHARGE** 8.1 IN CASE THE CONSULTANT IS A JOINT VENTURE, THE MEMBERS HEREBY AUTHORIZE THE MEMBER SPECIFIED **IN THE SCC** TO ACT ON THEIR BEHALF IN EXERCISING ALL THE CONSULTANT'S RIGHTS AND OBLIGATIONS TOWARDS THE PROCURING ENTITY UNDER THIS CONTRACT, INCLUDING WITHOUT LIMITATION THE RECEIVING OF INSTRUCTIONS AND PAYMENTS FROM THE PROCURING ENTITY.	-	-
SCC Detail	[NOTE: IF THE CONSULTANT CONSISTS ONLY OF ONE ENTITY, STATE “NOT APPLICABLE”; OR	Manual Input	

SCC Detail	***IF THE CONSULTANT IS A JOINT VENTURE CONSISTING OF MORE THAN ONE ENTITY, THE NAME OF THE JV MEMBER WHOSE ADDRESS IS SPECIFIED IN CLAUSE SCC 6.1 SHOULD BE INSERTED HERE.]*** THE LEAD MEMBER ON BEHALF OF THE JV IS _____ [***INSERT NAME OF THE MEMBER***]	Manual Input	
GCC Reference	**9. AUTHORIZED REPRESENTATIVES** 9.1 ANY ACTION REQUIRED OR PERMITTED TO BE TAKEN, AND ANY DOCUMENT REQUIRED OR PERMITTED TO BE EXECUTED UNDER THIS CONTRACT BY THE PROCURING ENTITY OR THE CONSULTANT MAY BE TAKEN OR EXECUTED BY THE OFFICIALS SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE AUTHORIZED REPRESENTATIVES ARE: FOR THE PROCURING ENTITY: [NAME, TITLE]	Auto Populate	ENERGY & PETROLEUM REGULATORY AUTHORITY
SCC Detail	FOR THE CONSULTANT: [NAME, TITLE]	Manual Input	

GCC Reference	**11. EFFECTIVENESS OF CONTRACT** 11.1 THIS CONTRACT SHALL COME INTO FORCE AND EFFECT ON THE DATE (THE "EFFECTIVE DATE") OF THE PROCURING ENTITY'S NOTICE TO THE CONSULTANT INSTRUCTING THE CONSULTANT TO BEGIN CARRYING OUT THE SERVICES. THIS NOTICE SHALL CONFIRM THAT THE EFFECTIVENESS CONDITIONS, IF ANY, LISTED IN THE **SCC** HAVE BEEN MET.	-	-
SCC Detail	THE EFFECTIVENESS CONDITIONS ARE THE FOLLOWING: [***INSERT "NOT APPLICABLE" OR LIST THE CONDITIONS***]	Manual Input	
GCC Reference	**12. TERMINATIONS OF CONTRACT FOR FAILURE TO BECOME EFFECTIVE** 12.1 IF THIS CONTRACT HAS NOT BECOME EFFECTIVE WITHIN SUCH TIME PERIOD AFTER THE DATE OF CONTRACT SIGNATURE AS SPECIFIED IN THE **SCC**, EITHER PARTY MAY, BY NOT LESS THAN TWENTY-TWO (22) DAYS WRITTEN NOTICE TO THE OTHER PARTY, DECLARE THIS CONTRACT TO BE NULL AND VOID, AND IN THE EVENT OF SUCH A DECLARATION BY EITHER PARTY, NEITHER PARTY SHALL HAVE ANY CLAIM AGAINST THE OTHER PARTY WITH RESPECT HERETO.	-	-

SCC Detail	TERMINATION OF CONTRACT FOR FAILURE TO BECOME EFFECTIVE: THE PERIOD SHALL BE _____ ***[INSERT PERIOD, E.G.: FOUR MONTHS].***	Manual Input	
GCC Reference	**13. COMMENCEMENT OF SERVICES** 13.1 THE CONSULTANT SHALL CONFIRM AVAILABILITY OF KEY EXPERTS AND BEGIN CARRYING OUT THE SERVICES NOT LATER THAN THE NUMBER OF DAYS AFTER THE EFFECTIVE DATE SPECIFIED IN **THE SCC.**	-	-
SCC Detail	COMMENCEMENT OF SERVICES: THE NUMBER OF DAYS SHALL BE_____ [E.G.: TEN]. ***CONFIRMATION OF KEY EXPERTS' AVAILABILITY TO START THE ASSIGNMENT SHALL BE SUBMITTED TO THE PROCURING ENTITY IN WRITING AS A WRITTEN STATEMENT SIGNED BY EACH KEY EXPERT.***	Manual Input	
GCC Reference	**14. EXPIRATION OF CONTRACT** 14.1 UNLESS TERMINATED EARLIER PURSUANT TO CLAUSE GCC 19 HEREOF, THIS CONTRACT SHALL EXPIRE AT THE END OF SUCH TIME PERIOD AFTER THE EFFECTIVE DATE AS SPECIFIED IN THE **SCC.**	-	-

SCC Detail	EXPIRATION OF CONTRACT: THE PERIOD SHALL BE _____ ***[INSERT TIME PERIOD, E.G.: TWELVE MONTHS].***	Manual Input	
GCC Reference	**23. LIABILITY OF THE CONSULTANT** 23.1 SUBJECT TO ADDITIONAL PROVISIONS, IF ANY, SET FORTH IN THE **SCC,** THE CONSULTANT'S LIABILITY UNDER THIS CONTRACT SHALL BE AS DETERMINED UNDER THE APPLICABLE LAW.	-	-
SCC Detail	NO ADDITIONAL PROVISIONS. [OR: THE FOLLOWING LIMITATION OF THE CONSULTANT'S LIABILITY TOWARDS THE PROCURING ENTITY CAN BE SUBJECT TO THE CONTRACT'S NEGOTIATIONS: "LIMITATION OF THE CONSULTANT'S LIABILITY TOWARDS THE PROCURING ENTITY: (A) EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT ON THE PART OF THE CONSULTANT OR ON THE PART OF ANY PERSON OR A FIRM ACTING ON BEHALF OF THE CONSULTANT IN CARRYING OUT THE SERVICES, THE CONSULTANT, WITH RESPECT TO DAMAGE CAUSED BY THE CONSULTANT TO THE PROCURING ENTITY'S PROPERTY, SHALL NOT BE LIABLE TO THE PROCURING ENTITY: (I) FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE; AND	Manual Input	

	(II) FOR ANY DIRECT LOSS OR DAMAGE THAT EXCEEDS [INSERT A MULTIPLIER, E.G.: ONE, TWO, THREE] TIMES THE TOTAL VALUE OF THE CONTRACT; (B) THIS LIMITATION OF LIABILITY SHALL NOT (I) AFFECT THE CONSULTANT'S LIABILITY, IF ANY, FOR DAMAGE TO THIRD PARTIES CAUSED BY THE CONSULTANT OR ANY PERSON OR FIRM ACTING ON BEHALF OF THE CONSULTANT IN CARRYING OUT THE SERVICES. (II) BE CONSTRUED AS PROVIDING THE CONSULTANT WITH ANY LIMITATION OR EXCLUSION FROM LIABILITY WHICH IS PROHIBITED BY THE APPLICABLE LAW.		

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GCC Reference	**24. INSURANCE TO BE TAKEN OUT BY THE CONSULTANT** 24.1 THE CONSULTANT (I) SHALL TAKEOUT AND MAINTAIN AND SHALL CAUSE ANY SUB-CONSULTANTS TO TAKEOUT AND MAINTAIN, AT ITS (OR THE SUB-CONSULTANTS', AS THE CASE MAY BE) OWN COST BUT ON TERMS AND CONDITIONS APPROVED BY THE PROCURING ENTITY, INSURANCE AGAINST THE RISKS, AND FOR THE COVERAGE SPECIFIED IN THE **SCC**, AND (II) AT THE PROCURING ENTITY'S REQUEST, SHALL PROVIDE EVIDENCE TO THE PROCURING ENTITY SHOWING THAT SUCH INSURANCE HAS BEEN TAKEN OUT AND MAINTAINED AND THAT THE CURRENT PREMIUMS THEREFORE HAVE BEEN PAID. THE CONSULTANT SHALL ENSURE THAT SUCH INSURANCE IS IN PLACE PRIOR TO COMMENCING THE SERVICES AS STATED IN CLAUSE GCC 13.	-	-
SCC Detail	THE INSURANCE COVERAGE AGAINST THE RISKS SHALL BE AS FOLLOWS: ***[NOTE: DELETE WHAT IS NOT APPLICABLE EXCEPT (A)].*** (A) PROFESSIONAL LIABILITY INSURANCE, WITH A MINIMUM COVERAGE OF _____ [INSERT AMOUNT AND CURRENCY WHICH SHOULD BE NOT LESS THAN THE TOTAL CEILING AMOUNT OF THE CONTRACT];	Manual Input	

	(B) THIRD PARTY MOTOR VEHICLE LIABILITY INSURANCE IN RESPECT OF MOTOR VEHICLES OPERATED IN THE PROCURING ENTITY'S COUNTRY BY THE CONSULTANT OR ITS EXPERTS OR SUB-CONSULTANTS, WITH A MINIMUM COVERAGE OF IN ACCORDANCE WITH THE APPLICABLE LAW IN KENYA (C) THIRD PARTY LIABILITY INSURANCE, WITH A MINIMUM COVERAGE OF IN ACCORDANCE WITH THE APPLICABLE LAW IN THE PROCURING ENTITY'S COUNTRY. (D) EMPLOYER'S LIABILITY AND WORKERS' COMPENSATION INSURANCE IN RESPECT OF THE EXPERTS AND SUB-CONSULTANTS IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE APPLICABLE LAW IN THE PROCURING ENTITY'S COUNTRY, AS WELL AS, WITH RESPECT TO SUCH EXPERTS, ANY SUCH LIFE, HEALTH, ACCIDENT, TRAVEL OR OTHER INSURANCE AS MAY BE APPROPRIATE; AND (E) INSURANCE AGAINST LOSS OF OR DAMAGE TO (I) EQUIPMENT PURCHASED IN WHOLE OR IN PART WITH FUNDS PROVIDED UNDER THIS CONTRACT, (II) THE CONSULTANT' S PROPERTY USED IN THE PERFORMANCE OF THE SERVICES, AND (III) ANY DOCUMENTS PREPARED BY THE CONSULTANT IN THE PERFORMANCE OF THE SERVICES.		

GCC Reference	**27. PROPRIETARY RIGHTS OF THE PROCURING ENTITY IN REPORTS AND RECORDS** 27.1 UNLESS OTHERWISE INDICATED IN THE **SCC**, ALL REPORTS AND RELEVANT DATA AND INFORMATION SUCH AS MAPS, DIAGRAMS, PLANS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, SUPPORTING RECORDS OR MATERIAL COMPILED OR PREPARED BY THE CONSULTANT FOR THE PROCURING ENTITY IN THE COURSE OF THE SERVICES SHALL BE CONFIDENTIAL AND BECOME AND REMAIN THE ABSOLUTE PROPERTY OF THE PROCURING ENTITY. THE CONSULTANT SHALL, NOT LATER THAN UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, DELIVER ALL SUCH DOCUMENTS TO THE PROCURING ENTITY, TOGETHER WITH A DETAILED INVENTORY THEREOF. THE CONSULTANT MAY RETAIN A COPY OF SUCH DOCUMENTS, DATA AND/OR SOFTWARE BUT SHALL NOT USE THE SAME FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT PRIOR WRITTEN APPROVAL OF THE PROCURING ENTITY.	-	-
SCC Detail	[IF APPLICABLE, INSERT ANY EXCEPTIONS TO PROPRIETARY RIGHTS PROVISION_____]	Manual Input	

GCC Reference	27.2 IF LICENSE AGREEMENTS ARE NECESSARY OR APPROPRIATE BETWEEN THE CONSULTANT AND THIRD PARTIES FOR PURPOSES OF DEVELOPMENT OF THE PLANS, DRAWINGS, SPECIFICATIONS, DESIGNS, DATABASES, OTHER DOCUMENTS AND SOFTWARE, THE CONSULTANT SHALL OBTAIN THE PROCURING ENTITY'S PRIOR WRITTEN APPROVAL TO SUCH AGREEMENTS, AND THE PROCURING ENTITY SHALL BE ENTITLED AT ITS DISCRETION TO REQUIRE RECOVERING THE EXPENSES RELATED TO THE DEVELOPMENT OF THE PROGRAM(S) CONCERNED. OTHER RESTRICTIONS ABOUT THE FUTURE USE OF THESE DOCUMENTS AND SOFTWARE, IF ANY, SHALL BE SPECIFIED IN THE **SCC**.	-	-

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SCC Detail	***[IF THERE IS TO BE NO RESTRICTION ON THE FUTURE USE OF THESE DOCUMENTS BY EITHER PARTY, THIS CLAUSE SCC 27.2 SHOULD BE INDICATED "NOT APPLICABLE". IF THE PARTIES WISH TO RESTRICT SUCH USE, ANY OF THE FOLLOWING OPTIONS, OR ANY OTHER OPTION AGREED TO BY THE PARTIES, COULD BE USED:*** [THE CONSULTANT SHALL NOT USE THESE [INSERT WHAT APPLIES…… DOCUMENTS AND SOFTWARE……] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE PROCURING ENTITY.] OR [THE PROCURING ENTITY SHALL NOT USE THESE [INSERT WHAT APPLIES……. DOCUMENTS AND SOFTWARE……] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE CONSULTANT.] OR [NEITHER PARTY SHALL USE THESE [INSERT WHAT APPLIES……. DOCUMENTS AND SOFTWARE……] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE OTHER PARTY.]	Manual Input	
GCC Reference	**35. ASSISTANCE AND EXEMPTIONS**	-	-

35.1 UNLESS OTHERWISE SPECIFIED IN THE **SCC**, THE PROCURING ENTITY SHALL USE ITS BEST EFFORTS TO:

A ASSIST THE CONSULTANT WITH OBTAINING WORK PERMITS AND SUCH OTHER DOCUMENTS AS SHALL BE NECESSARY TO ENABLE THE CONSULTANT TO PERFORM THE SERVICES.

B ASSIST THE CONSULTANT WITH PROMPTLY OBTAINING, FOR THE EXPERTS AND, IF APPROPRIATE, THEIR ELIGIBLE DEPENDENTS, ALL NECESSARY ENTRY AND EXIT VISAS, RESIDENCE PERMITS, EXCHANGE PERMITS, AND ANY OTHER DOCUMENTS REQUIRED FOR THEIR STAY IN KENYA WHILE CARRYING OUT THE SERVICES UNDER THE CONTRACT.

C FACILITATE PROMPT CLEARANCE THROUGH CUSTOMS OF ANY PROPERTY REQUIRED FOR THE SERVICES AND OF THE PERSONAL EFFECTS OF THE EXPERTS AND THEIR ELIGIBLE DEPENDENTS.

D ISSUE TO OFFICIALS, AGENTS AND REPRESENTATIVES OF THE GOVERNMENT ALL SUCH INSTRUCTIONS AND INFORMATION AS MAY BE NECESSARY OR APPROPRIATE FOR THE PROMPT AND EFFECTIVE IMPLEMENTATION OF THE SERVICES.

	E ASSIST THE CONSULTANT AND THE EXPERTS AND ANY SUB-CONSULTANTS EMPLOYED BY THE CONSULTANT FOR THE SERVICES WITH OBTAINING EXEMPTION FROM ANY REQUIREMENT TO REGISTER OR OBTAIN ANY PERMIT TO PRACTICE THEIR PROFESSION OR TO ESTABLISH THEMSELVES EITHER INDIVIDUALLY OR AS A CORPORATE ENTITY IN KENYA ACCORDING TO THE APPLICABLE LAW IN KENYA. F ASSIST THE CONSULTANT, ANY SUB-CONSULTANTS AND THE EXPERTS OF EITHER OF THEM WITH OBTAINING THE PRIVILEGE, PURSUANT TO THE APPLICABLE LAW IN KENYA, OF BRINGING INTO KENYA REASONABLE AMOUNTS OF FOREIGN CURRENCY FOR THE PURPOSES OF THE SERVICES OR FOR THE PERSONAL USE OF THE EXPERTS AND OF WITHDRAWING ANY SUCH AMOUNTS AS MAY BE EARNED THERE IN BY THE EXPERTS IN THE EXECUTION OF THE SERVICES. G PROVIDE TO THE CONSULTANT ANY SUCH OTHER ASSISTANCE AS MAY BE SPECIFIED IN THE **SCC.**		
SCC Detail	***[LIST HERE ANY CHANGES OR ADDITIONS TO CLAUSE GCC 35.1. IF THERE ARE NO SUCH CHANGES OR ADDITIONS, INDICATE "NOT APPLICABLE"]***	Manual Input	

SCC Detail	***[LIST HERE ANY OTHER ASSISTANCE TO BE PROVIDED BY THE PROCURING ENTITY. IF THERE IS NO SUCH OTHER ASSISTANCE, INDICATE "NOT APPLICABLE" FOR THIS CLAUSE SCC 35.1(G).]***	Manual Input	
GCC Reference	**41. CEILING AMOUNT** 41.2 PAYMENTS UNDER THIS CONTRACT SHALL NOT EXCEED THE CEILINGS IN FOREIGN CURRENCY AND IN LOCAL CURRENCY SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE CEILING IN FOREIGN CURRENCY IS: _____ ***[INSERT AMOUNT AND CURRENCY] [INDICATE: INCLUSIVE OR EXCLUSIVE] OF LOCAL INDIRECT TAXES.***	Manual Input	
SCC Detail	THE CEILING IN LOCAL CURRENCY IS: _____ ***[INSERT AMOUNT AND CURRENCY] [INDICATE: INCLUSIVE OR EXCLUSIVE] OF LOCAL INDIRECT TAXES.***	Manual Input	
SCC Detail	ANY LOCAL TAXES CHARGEABLE IN RESPECT OF THIS CONTRACT FOR THE SERVICES PROVIDED BY THE CONSULTANT SHALL [***INSERT AS APPROPRIATE: "BE PAID" OR "REIMBURSED"]*** BY THE PROCURING ENTITY ***[INSERT AS APPROPRIATE: "FOR" OR "TO"] THE CONSULTANT.***	Manual Input	

SCC Detail	THE AMOUNT OF SUCH TAXES IS _____ *[INSERT THE AMOUNT AS FINALIZED AT THE CONTRACT'S NEGOTIATIONS ON THE BASIS OF THE AMOUNTS PROVIDED BY THE CONSULTANT IN FORM FIN-2 OF THE CONSULTANT'S FINANCIAL PROPOSAL.]*	Manual Input	
GCC Reference	**42. REMUNERATION AND REIMBURSABLE EXPENSES** 42.3 UNLESS THE **SCC** PROVIDES FOR THE PRICE ADJUSTMENT OF THE REMUNERATION RATES, SAID REMUNERATION SHALL BE FIXED FOR THE DURATION OF THE CONTRACT.	-	-
SCC Detail	PRICE ADJUSTMENT ON THE REMUNERATION ..... [*INSERT "APPLIES" OR "DOES NOT APPLY"]* *IF THE PRICE ADJUSTMENT APPLIES, INDICATE THE FORMULA AND PROCEDURE TO BE USED FOR THE ADJUSTMENTS*	Manual Input	
GCC Reference	(IV) ANY OTHER ITEMS AS SPECIFIED N THE **SCC.**	-	-
SCC Detail	THE OTHER REMUNERATION ITEMS ARE: _____	Manual Input	

GCC Reference	**43. TAXES AND DUTIES** 43.1 THE CONSULTANT, SUB-CONSULTANTS AND EXPERTS ARE RESPONSIBLE FOR MEETING ANY AND ALL TAX LIABILITIES ARISING OUT OF THE CONTRACT UNLESS IT IS STATED OTHERWISE IN **THE SCC.**	-	-

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SCC Detail	[THE PROCURING ENTITY SHALL DECIDE WHETHER THE CONSULTANT (I) SHOULD BE EXEMPTED FROM LOCAL TAX, OR (II) SHOULD BE REIMBURSED BY THE PROCURING ENTITY FOR ANY SUCH TAX THEY MIGHT HAVE TO PAY (OR THAT THE PROCURING ENTITY WOULD PAY SUCH TAX ON BEHALF OF THE CONSULTANT] THE PROCURING ENTITY WARRANTS THAT [CHOOSE ONE APPLICABLE OPTION CONSISTENT WITH THE ITC 16.3 AND THE OUTCOME OF THE CONTRACT'S NEGOTIATIONS (FORM FIN-2, PART B "LOCAL TAXES"): IF ITC 16.3 INDICATES A TAX EXEMPTION STATUS, INCLUDE THE FOLLOWING: "THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS SHALL BE EXEMPT FROM" OR IF ITC16.3 DOES NOT INDICATE THE EXEMPTION AND, DEPENDING ON WHETHER THE PROCURING ENTITY SHALL PAY THE WITHHOLDING TAX OR THE CONSULTANT HAS TO PAY, INCLUDE THE FOLLOWING: "THE PROCURING ENTITY SHALL PAY ON BEHALF OF THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS," OR "THE PROCURING ENTITY SHALL REIMBURSE THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS"] ANY TAXES, DUTIES, FEES, LEVIES AND OTHER IMPOSITIONS IMPOSED, UNDER THE APPLICABLE LAW IN KENYA, ON THE CONSULTANT, THE SUB-CONSULTANTS AND THE EXPERTS	Manual Input	

GCC Reference	**44. CURRENCY OF PAYMENT** 44.1 ANY PAYMENT UNDER THIS CONTRACT SHALL BE MADE IN THE CURRENCY OR CURRENCIES SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE CURRENCY OR CURRENCIES OF PAYMENT SHALL BE THE FOLLOWING: ***[LIST CURRENCY (IES) WHICH SHOULD BE THE SAME AS IN THE FINANCIAL PROPOSAL, FORM FIN-2]***	Manual Input	

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GCC Reference	**45. MODE OF BILLING AND PAYMENT** 45.1BILLING AND PAYMENTS IN RESPECT OF THE SERVICES SHALL BE MADE AS FOLLOWS: A) ADVANCE PAYMENT. WITHIN THE NUMBER OF DAYS AFTER THE EFFECTIVE DATE, THE PROCURING ENTITY SHALL PAY TO THE CONSULTANT AN ADVANCE PAYMENT AS SPECIFIED IN THE SCC. UNLESS OTHERWISE INDICATED IN THE **SCC,** AN ADVANCE PAYMENT SHALL BE MADE AGAINST AN ADVANCE PAYMENT BANK GUARANTEE ACCEPTABLE TO THE PROCURING ENTITY IN AN AMOUNT (OR AMOUNTS) AND IN A CURRENCY (OR CURRENCIES) SPECIFIED IN THE **SCC**. SUCH GUARANTEE (I) IS TO REMAIN EFFECTIVE UNTIL THE ADVANCE PAYMENT HAS BEEN FULLY SET OFF, AND (II) IS TO BE IN THE FORM SET FORTH IN APPENDIX E. THE ADVANCE PAYMENTS WILL BE SET OFF BY THE PROCURING ENTITY IN EQUAL INSTALMENTS AGAINST THE STATEMENTS FOR THE NUMBER OF MONTHS OF THE SERVICES SPECIFIED IN THE **SCC** UNTIL SAID ADVANCE PAYMENTS HAVE BEEN FULLY SETOFF.	-	-

SCC Detail	[THE ADVANCE PAYMENT COULD BE IN EITHER THE FOREIGN CURRENCY, OR THE LOCAL CURRENCY, OR BOTH; SELECT THE CORRECT WORDING IN THE CLAUSE HERE BELOW. THE ADVANCE BANK PAYMENT GUARANTEE SHOULD BE IN THE SAME CURRENCY(IES)] THE FOLLOWING PROVISIONS SHALL APPLY TO THE ADVANCE PAYMENT AND THE ADVANCE BANK PAYMENT GUARANTEE: (1) AN ADVANCE PAYMENT [OF ***[INSERT AMOUNT***] IN FOREIGN CURRENCY] [AND OF ***[INSERT AMOUNT]*** IN LOCAL CURRENCY] SHALL BE MADE WITHIN ***[INSERT NUMBER]*** DAYS AFTER THE EFFECTIVE DATE. THE ADVANCE PAYMENT WILL BE SET OFF BY THE PROCURING ENTITY IN EQUAL INSTALMENTS AGAINST THE STATEMENTS FOR THE FIRST ***[INSERT NUMBER]*** MONTHS OF THE SERVICES UNTIL THE ADVANCE PAYMENT HAS BEEN FULLY SET OFF.	Manual Input	
SCC Detail	(2) THE ADVANCE BANK PAYMENT GUARANTEE SHALL BE IN THE AMOUNT AND IN THE CURRENCY OF THE CURRENCY (IES) OF THE ADVANCE PAYMENT.	Manual Input	

GCC Reference	B) THE ITEMIZED INVOICES. AS SOON AS PRACTICABLE AND NOT LATER THAN FIFTEEN (15) DAYS AFTER THE END OF EACH CALENDAR MONTH DURING THE PERIOD OF THE SERVICES, OR AFTER THE END OF EACH TIME INTERVAL OTHERWISE INDICATED IN THE SCC, THE CONSULTANT SHALL SUBMIT TO THE PROCURING ENTITY, IN DUPLICATE, ITEMIZED INVOICES, ACCOMPANIED BY THE RECEIPTS OR OTHER APPROPRIATE SUPPORTING DOCUMENTS, OF THE AMOUNTS PAYABLE PURSUANT TO CLAUSES GCC 44 AND GCC 45 FOR SUCH INTERVAL, OR ANY OTHER PERIOD INDICATED IN THE **SCC.** SEPARATE INVOICES HALL BE SUBMITTED FOR EXPENSES INCURRED IN FOREIGN CURRENCY AND IN LOCAL CURRENCY. EACH INVOICE SHALL SHOW REMUNERATION AND REIMBURSABLE EXPENSES SEPARATELY.	-	-
SCC Detail	[INDICATE "NOT APPLICABLE" FOR THIS CLAUSE SCC 45.1(B) IF THE CONSULTANT SHALL HAVE TO SUBMIT ITS ITEMIZED STATEMENTS MONTHLY. OTHERWISE, THE FOLLOWING TEXT CAN BE USED TO INDICATE THE REQUIRED INTERVALS: THE CONSULTANT SHALL SUBMIT TO THE PROCURING ENTITY ITEMIZED STATEMENTS AT TIME INTERVALS OF _____ ***[E.G. "EVERY QUARTER", "EVERY SIX MONTHS", "EVERY TWO WEEKS", ETC.]***.	Manual Input	

GCC Reference	E) ALL PAYMENTS UNDER THIS CONTRACT SHALL BE MADE TO THE ACCOUNTS OF THE CONSULTANT SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE ACCOUNTS ARE: FOR FOREIGN CURRENCY: [INSERT ACCOUNT].	Manual Input	
SCC Detail	FOR LOCAL CURRENCY: ***[INSERT ACCOUNT].***	Manual Input	
GCC Reference	**46 INTERESTS ON DELAYED PAYMENTS** 46.1 IF THE PROCURING ENTITY HAD DELAYED PAYMENTS BEYOND THIRTY (30) DAYS AFTER THE DUE DATE STATED IN CLAUSE GCC 45.1(C), INTEREST SHALL BE PAID TO THE CONSULTANT ON ANY AMOUNT DUE BY, NOT PAID ON, SUCH DUE DATE FOR EACH DAY OF DELAY AT THE ANNUAL RATE STATED IN THE **SCC.**	-	-
SCC Detail	THE INTEREST RATE IS: [*INSERT RATE].*	Manual Input	
GCC Reference	**49 DISPUTE RESOLUTION** 49.1 ANY DISPUTE BETWEEN THE PARTIES ARISING UNDER OR RELATED TO THIS CONTRACT THAT CANNOT BE SETTLED AMICABLY MAY BE REFERRED TO BY EITHER PARTY TO THE ADJUDICATION/ARBITRATION IN ACCORDANCE WITH THE PROVISIONS IN THE **SCC.**	-	-

SCC Detail	DISPUTES SHALL BE SETTLED BY ARBITRATION BY THE NAIROBI CENTRE FOR INTERNATIONAL ARBITRATIONS.	Manual Input	

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